

No. 14373

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United States  
Court of Appeals  
for the Ninth Circuit

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NORTHERN PACIFIC RAILWAY COMPANY,  
a Corporation,

Appellant,

vs.

CHICAGO, MILWAUKEE, ST. PAUL AND  
PACIFIC RAILROAD COMPANY, a Cor-  
poration,

Appellee.

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Transcript of Record

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Appeal from the United States District Court for the  
Western District of Washington,  
Southern Division.

FILED

SEP 8 1954



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Court of Appeals  
for the Ninth Circuit

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Appellant,

vs.

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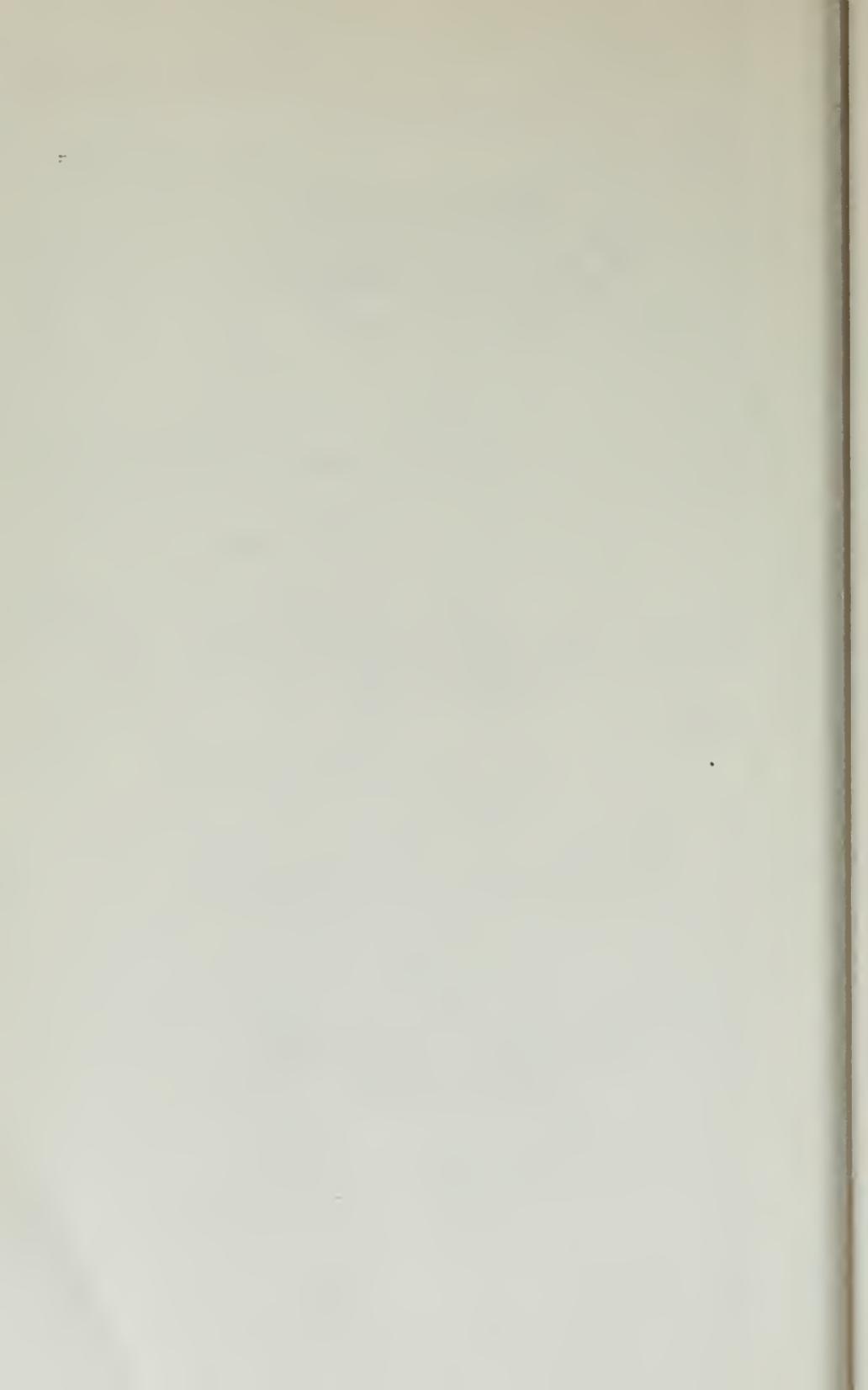
Appellee.

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Western District of Washington,  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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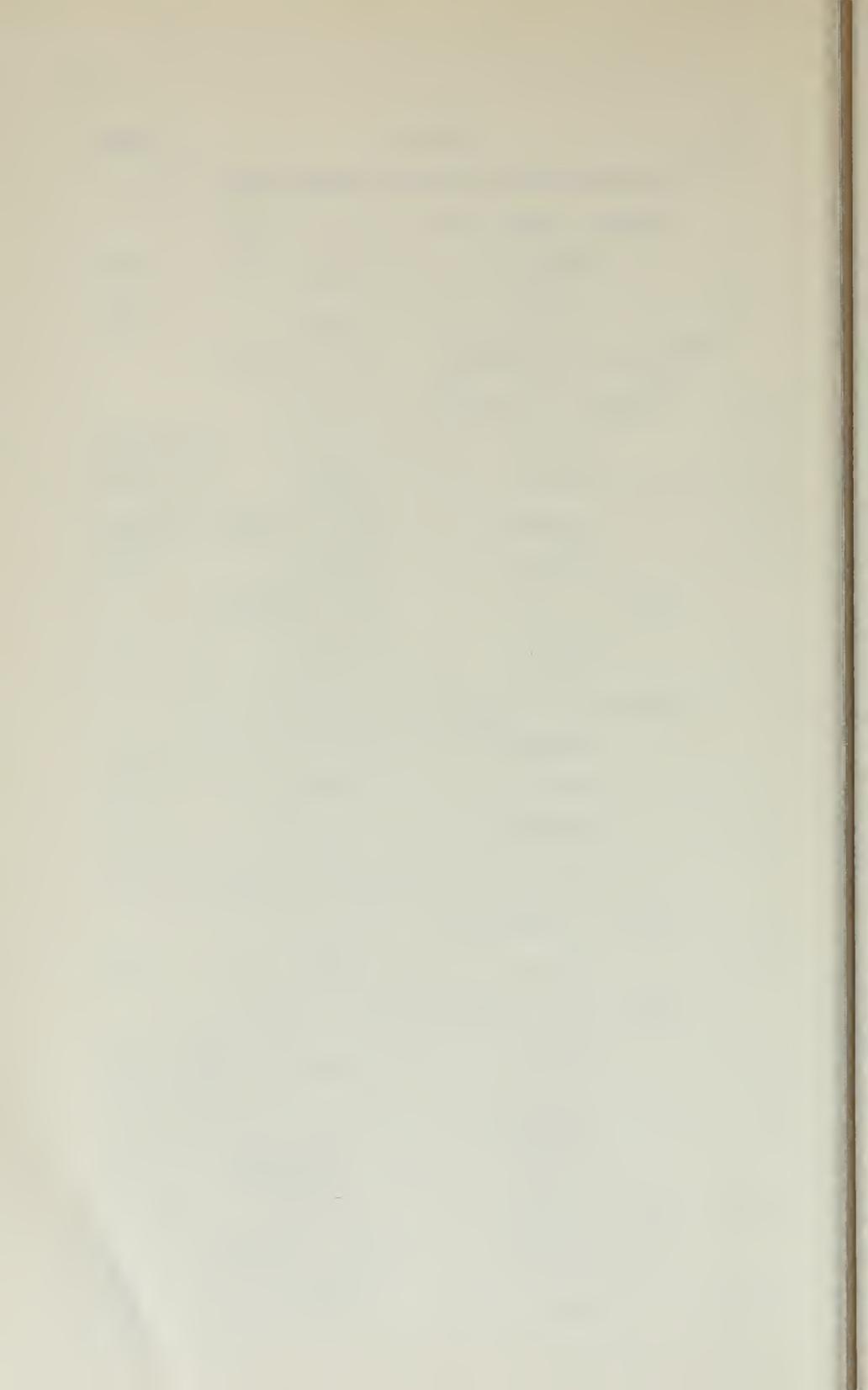
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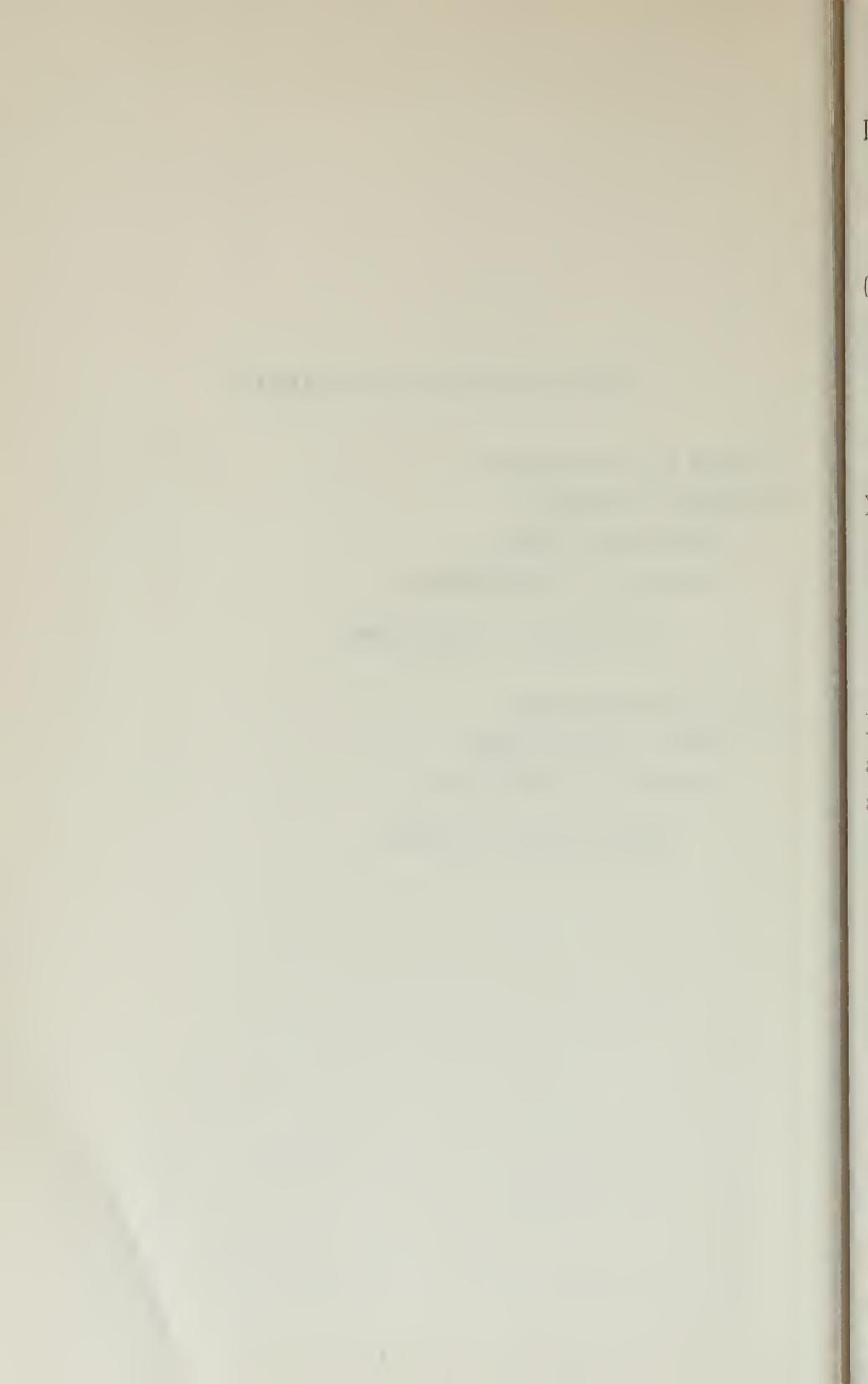
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ATTORNEYS OF RECORD

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Attorneys for Appellant.

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609 White Building,  
Seattle (1) Washington,  
Attorney for Appellee.



In the District Court of the United States, Western  
District of Washington, Southern Division

No. 1761

CHICAGO, MILWAUKEE, ST. PAUL AND  
PACIFIC RAILROAD COMPANY, a Wis-  
consin Corporation,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,  
a Wisconsin Corporation,

Defendant.

### COMPLAINT

Comes Now the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a corporation, plaintiff above named, and for cause of action against the above-named defendant alleges as follows:

#### I.

This is a suit arising under a law of the United States, to wit: Part I of the Interstate Commerce Act (Title 41, U.S.C., §§ 1 to 27, inclusive, including National Transportation Policy Act of September 18, 1940, 54 U. S. Statutes at Large 899).

#### II.

That plaintiff and defendant are common carriers by railroad duly authorized to do, and doing business in the State of Washington in the above-entitled district and elsewhere, in the transportation

of persons and property in interstate and intrastate commerce, and as such are subject to the provisions of said Part I of the Interstate Commerce Act. That the plaintiff has paid all license fees due the State of Washington.

### III.

That a portion of plaintiff's line of railroad extends, so far as here material, northerly through Grant County, Washington, to the City of Moses Lake, which city is located in Sections 14, 15, 16, 21, 22, 23, 27, 28 and 33, all in Township 19 North, Range 28 East, Willamette Meridian. That the portion of the plaintiff's said line in and in the vicinity of said City of Moses Lake is shown in orange upon the map hereto attached, marked Exhibit A, and incorporated by reference in this complaint. That plaintiff is the only railroad serving said City of Moses Lake, and handles a large volume of traffic both originating at and destined to said Moses Lake and the territory contiguous thereto.

### IV.

That defendant proposes and has undertaken to construct, and has actually commenced the construction of an extension of its line of railroad, said extension to be connected with defendant's existing line of railroad near defendant's station of Wheeler, in Section 16, Township 19 North, Range 29 East, Willamette Meridian, and thence extending in a westerly direction through Sections 9, 8, 7 and 18 in said Township 19 North, Range 29 East, Willamette Meridian, and into Section 13, Township

19 North, Range 28 East, Willamette Meridian, and terminating at a point approximately one-half mile from the City Limits of said City of Moses Lake. That said proposed extension of the defendant's line is located within Irrigation Block 41 of the Columbia Basin Project, and crosses lands which have been divided into and designated as Farm Units by the United States Bureau of Reclamation. That all of said Section 13 in which the defendant's proposed extension terminates, with the exception of the Municipal Airport shown on said Exhibit A, has been divided into such farm units. That all of said farm units have irrigation water available, and are best suited for farming purposes, and that most of said units have been and now are under cultivation. The defendant's said existing line is shown in green, and said extension is shown in yellow upon the said Exhibit A.

#### V.

That the territory sought to be reached by said extension of defendant's line of railroad is adjacent and tributary to the territory now served by plaintiff's above-described railroad, and plaintiff is informed and believes, and therefore alleges that, although there are at present no industries, or loading or unloading facilities, now existing adjacent to said proposed extension or the westerly terminus thereof, it is defendant's intention and purpose by the construction of said extension to induce shippers and consignees of freight who are now located in and in the vicinity of said Moses Lake, on and in the vicinity of plaintiff's line of railroad, to move their

places of business or their facilities for forwarding and receiving freight, or both, from their present location to locations on defendant's said extension of line, and to induce shippers and receivers of freight intending to serve the said City of Moses Lake who otherwise would locate on or in the vicinity of plaintiff's line of railroad to locate upon defendant's said extension of line, and to handle both inbound and outbound freight destined to and originating at said City of Moses Lake via defendant's said extension of line which otherwise and normally would move via plaintiff's line of railroad. That all of the service above described can be more practically and economically furnished by plaintiff than by defendant's said extension, and plaintiff is ready, willing and able to furnish such service. That the construction and operation by defendant of said extension would entail the expenditure by the defendant of large sums of money, would constitute an invasion of plaintiff's territory, and would deprive plaintiff of revenues which would and could normally accrue to plaintiff from said service, all contrary to the National Transportation Policy, in that it would constitute an unfair and destructive competitive practice on the part of defendant.

## VI.

That defendant heretofore, on or about May 24, 1948, applied to the Interstate Commerce Commission under the provisions of Section 1(18) of the Interstate Commerce Act for a certificate of public convenience and necessity for the construction of

an extension of its line in substantially the same territory as the extension now proposed. The location of said proposed extension which was the subject of said application is shown in red upon said Exhibit A, hereto attached and herein incorporated. That the Interstate Commerce Commission on May 20, 1949, in its Finance Docket No. 16119, issued its decision and order holding that present and future public convenience and necessity were not shown to require the construction and operation of said extension, and denying said application. However, defendant has neither applied for nor received a certificate of public convenience and necessity from said Interstate Commerce Commission for the construction or operation of the extension of its line described in paragraph IV of this complaint, but on the contrary has commenced the construction of a grade for the aforesaid extension, and unless restrained by this Court defendant will continue with the construction of said extension without having first obtained from the Interstate Commerce Commission a certificate that the present and future public convenience and necessity require or will require the construction and operation of such additional and extended line of railroad, all contrary to the provisions of Section 1(18) of said Interstate Commerce Act.

## VII.

That plaintiff has no adequate remedy at law, and by reason of the allegations hereinabove set forth is a party in interest under the provisions of Section 1(20) of the Interstate Commerce Act.

Wherefore, plaintiff prays the Court:

(1) For a preliminary injunction restraining and enjoining the defendant Northern Pacific Railway Company from undertaking or proceeding further with the construction of the extension of its line of railroad hereinbefore described, or from undertaking or commencing construction of any other line of railroad connecting the existing line with the territory hereinabove described, or from causing or suffering any of said acts to be done.

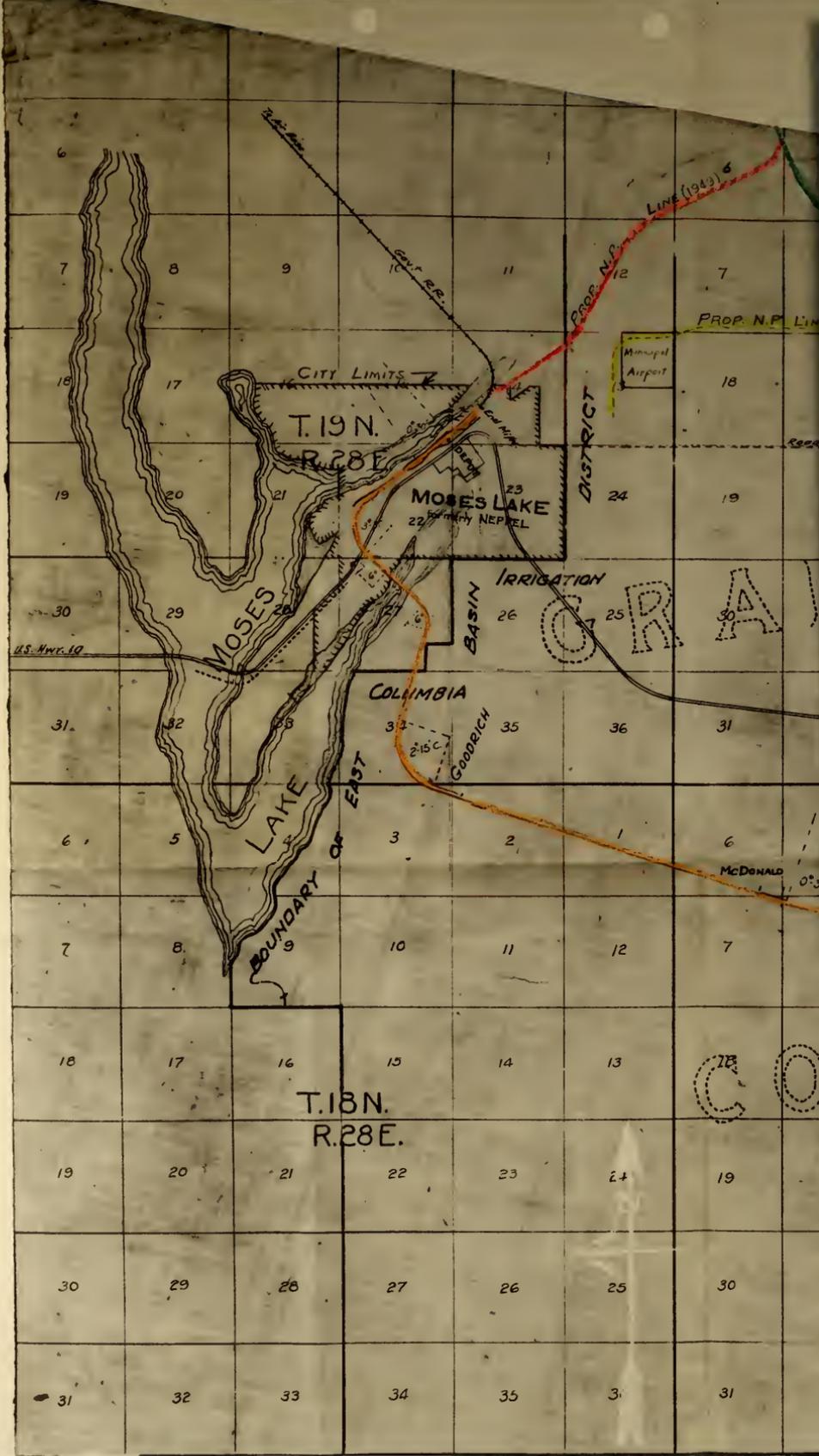
(2) For a judgment and decree of this Court upon final hearing of this Court permanently enjoining defendant from doing or causing or suffering to be done any of the acts described in paragraph (1) of this prayer, unless and until defendant shall have obtained from the Interstate Commerce Commission a certificate of public convenience and necessity in compliance with Section 1(18) of the Interstate Commerce Act.

(3) For such other and further relief as the Court may deem equitable and just herein.

(4) For plaintiff's cost and disbursements herein incurred.

/s/ B. E. LUTTERMAN,  
CHAS. F. HANSON,  
MORELL E. SHARP,

Attorneys for Plaintiff.





C. M. ST. P. & P. RR. CO.  
 \_\_\_\_\_ DIVISION  
 MOSES LAKE GRANT WASH  
 TOWN COUNTY STATE  
 SCALE 1 IN = 500 FEET  
 Seattle, Wash 12/21/1953 EX. NO. A

Endorsed: Filed December 25, 1953.

State of Washington,  
County of King—ss.

Larry H. Dugan, being first duly sworn, upon oath, deposes and says:

That he is Vice President of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a Wisconsin corporation, plaintiff in the above-entitled action, and as such is authorized to and does make this verification for and on behalf of said plaintiff; that he has read the above and foregoing complaint, knows the contents thereof, and believes the same to be true.

/s/ LARRY H. DUGAN.

Subscribed and sworn to before me this 29th day of December, 1953.

[Seal] /s/ RUTH WALLA,  
Notary Public in and for Said State, Residing at  
Seattle Therein.

[Endorsed]: Filed December 29, 1953.

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[Title of District Court and Cause.]

### ANSWER

The defendant, Northern Pacific Railway Company, answers the complaint herein as follows:

#### First Defense

1. Defendant admits the allegations contained in paragraphs I and II of the complaint.

2. Defendant admits the allegations contained in paragraph III of the complaint to the effect that a portion of plaintiff's line of railroad extends to the city of Moses Lake, Grant County, Washington, at approximately the location shown on the map, Exhibit A, attached to the complaint.

3. The defendant admits the allegations contained in paragraph IV of the complaint to the effect that defendant proposes and has undertaken to construct certain trackage from its line of railroad into Section 13, Township 19 North, Range 28 East, W. M., Grant County, Washington, at approximately the location shown on said map, Exhibit A attached to the complaint.

4. Defendant denies each and every allegation in the complaint except those admitted above.

### Second Defense

1. The order granting preliminary injunction, entered herein on January 8, 1954, upon the application of plaintiff, enjoined and restrained the defendant, pending hearing on the merits of this proceeding, from undertaking or proceeding further with the proposed construction of spur or industrial trackage to reach industrial property owned by defendant in said Section 13, Township 19 North, Range 28 East, W. M. As a result of the delay in such construction, the defendant has been damaged and will continue to be damaged so long as such delay continues, on account of additional costs and expenses incurred and to be incurred in connection

with such construction and the loss of rentals from such industrial property and loss of profits on traffic moving to and from said property. The extent of such damages and costs to the defendant cannot presently be determined, but defendant estimates them to be in excess of \$50,000.00, the amount of the injunction bond filed herein.

Wherefore, having fully answered plaintiff's complaint, the defendant prays:

1. That said complaint be dismissed;
2. That the preliminary injunction heretofore issued herein be dissolved;
3. That the defendant have judgment against the plaintiff and its surety on said injunction bond for the payment of such costs and damages as the defendant may incur or suffer as a result of having been wrongfully enjoined and restrained from the construction of such trackage;
4. That the defendant have and recover its costs and disbursements herein to be taxed; and
5. For such other and further relief as the court may deem equitable and just herein.

/s/ DEAN H. EASTMAN,

/s/ ROSCOE KRIER,

/s/ ROGER J. CROSBY,

Attorneys for Defendant.

Receipt of copy acknowledged.

[Endorsed]: Filed January 22, 1954.

[Title of District Court and Cause.]

REPLY

The plaintiff, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, replying to the affirmative matter set forth in the second defense in the defendant's answer herein, denies that the said defendant has been damaged and will continue to be damaged as therein alleged, or otherwise or at all, in the sum of \$50,000.00, or in any sum or sums whatsoever, on account of the preliminary injunction entered herein, or on account of any act of the plaintiff.

Wherefore, having fully answered, the plaintiff prays for judgment in accordance with the prayer of its complaint.

/s/ B. E. LUTTERMAN,  
CHAS. F. HANSON,  
MORELL E. SHARP,

Attorneys for Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed January 29, 1954.

[Title of District Court and Cause.]

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

Be It Remembered That the above-entitled cause came duly and regularly on for trial before the undersigned, Judge of the above-entitled Court, on the 23rd day of February, 1954, and the plaintiff being represented by Mr. B. E. Lutterman, its attorney of record, and the defendant being represented by Messrs. Dean H. Eastman and Roscoe Krier, its attorneys of record. Both parties introduced testimony and exhibits, and the Court having listened to argument of counsel and having duly considered the evidence and the law, and having rendered its oral decision which by reference is incorporated herein, now finds the following fact:

Findings of Fact

I.

This is a suit arising under a law of the United States, to wit: Part I of the Interstate Commerce Act (Title 49, U.S.C.A., §§ 1 to 27, inclusive, including National Transportation Policy Act of September 18, 1940, 54 U. S. Statutes at Large 899).

II.

That plaintiff and defendant are common carriers by railroad duly authorized to do, and doing business in the State of Washington in the above-entitled district and elsewhere, in the transportation of persons and property in interstate and intrastate

commerce, and as such are subject to the provisions of said Part I of the Interstate Commerce Act. That the plaintiff has paid all license fees due the State of Washington.

### III.

That a portion of plaintiff's line of railroad extends, so far as here material, northerly through Grant County, Washington, to the City of Moses Lake, which city is located in Sections 14, 15, 16, 21, 22, 23, 27, 28 and 33, all in Township 19 North, Range 28 East, Willamette Meridian. That plaintiff is the only railroad serving said City of Moses Lake, and handles a large volume of traffic, interstate and intrastate, both originating at and destined to said Moses Lake and the territory contiguous thereto.

### IV.

That defendant proposes and has undertaken to construct, and has actually commenced the construction of a track or line of railroad, said track to be connected with defendant's existing line of railroad near defendant's station of Wheeler, in Section 16, Township 19 North, Range 29 East, Willamette Meridian, Grant County, Washington, and thence extending in a westerly direction through Sections 9, 8, 7 and 18 in said Township 19 North, Range 29 East, Willamette Meridian, and into Section 13, Township 19 North, Range 28 East, Willamette Meridian, Grant County, Washington, and terminating at a point approximately on the south boundary of said Section 13, a total distance of approximately four miles. That the said defendant intends

to construct within Section 13 additional tracks connecting with the aforescribed track.

#### V.

That the territory sought to be reached by the said proposed track or line of railroad is adjacent and tributary to the trading center of the City of Moses Lake, which City is already being served by the plaintiff's aforesaid railroad and that it is feasible and practicable for said area to be served and occupied by the plaintiff railroad. That there are no industries or loading or unloading facilities now existing adjacent to said proposed track or within said Section 13. That it is the defendant's intention and purpose by the construction of said track or line of railroad, to locate shippers and consignees of freight within said Section 13. That the construction by the defendant of said track or line of railroad would entail the expenditure of a substantial sum of money, and would deprive the plaintiff of substantial revenues.

#### VI.

That defendant heretofore, on or about May 24, 1948, applied to the Interstate Commerce Commission under the provisions of Section 1(18) of the Interstate Commerce Act for a certificate of public convenience and necessity for the construction of an extension of its line in substantially the same territory as the track or line of railroad described in paragraph IV hereof. That the Interstate Commerce Commission on May 20, 1949, in its Finance Docket No. 16119, issued its decision and order

holding that present and future public convenience and necessity were not shown to require the construction and operation of said extension, and denying said application. That there is no substantial or material difference in the defendant's said 1948 proposal and that presented by the present proposal. That the defendant has neither applied for nor received a certificate of public convenience and necessity from said Interstate Commerce Commission for the construction or operation of the track or line of railroad described in said paragraph IV hereof.

#### VII.

That the evidence overwhelmingly establishes that as a matter of fact the said proposed track of the defendant is an extension and not a spur or industrial track within the meaning of the aforescribed provisions of the Interstate Commerce Act, and that a certificate from the Interstate Commerce Commission certifying the public convenience and necessity is required for the building of such track.

#### Conclusions of Law

From the foregoing facts the Court concludes:

##### I.

That the subject-matter of the action and the parties thereto are within the jurisdiction of this Court.

##### II.

That the proposed track of the defendant described in paragraph IV of the foregoing findings is an extension of the defendant's line of railroad

within the meaning of Section 1(18) of the Interstate Commerce Act (49 U.S.C. 1(18)), and cannot lawfully be constructed until the defendant shall first have obtained from the Interstate Commerce Commission a certificate that the present or future convenience and necessity require, or will require, the construction or operation, or construction and operation, of such additional or extended line of railroad.

### III.

That a judgment and decree should be entered herein in accordance with the prayer of the plaintiff's complaint, making permanent the preliminary injunction entered herein on the eighth day of January, 1954, and permanently enjoining and restraining the defendant from constructing said track described in paragraph IV of the Findings of Fact, unless and until it shall have obtained such certificate of convenience and necessity, and that the plaintiff is entitled to have judgment against the defendant for its costs and disbursements herein.

### IV.

That the security bond for preliminary injunction filed herein on the eighth day of January, 1954, by the plaintiff as principal, and the United Pacific Insurance Company as surety, should be cancelled and the said plaintiff, as principal, and the said United Pacific Insurance Company, as surety, and each of them, should be released and exonerated from all liability arising thereunder.

Dated this first day of March, 1954.

/s/ GEORGE H. BOLDT,  
Judge.

Presented by:

/s/ B. E. LUTTERMAN,  
Of Attorneys for Plaintiff.

Approved as to form:

/s/ DEAN H. EASTMAN,  
Of Counsel for Defendants.

[Endorsed]: Filed March 1, 1954.

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In the District Court of the United States, Western  
District of Washington, Southern Division

No. 1761

CHICAGO, MILWAUKEE, ST. PAUL AND  
PACIFIC RAILROAD COMPANY, a Wis-  
consin Corporation,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,  
a Wisconsin Corporation,

Defendant.

JUDGMENT AND DECREE GRANTING  
PERMANENT INJUNCTION

This cause came duly and regularly on for trial  
on the 23rd day of February, 1954, the plaintiff  
being represented by Mr. B. E. Lutterman, its at-

torney of record, and the defendant being represented by Messrs. Dean H. Eastman and Roscoe Krier, its attorneys of record, and evidence both oral and documentary having been introduced and the Court having announced its oral decision at the conclusion of the trial, and having signed and entered its findings of fact and conclusions of law herein,

Now, Therefore, It Is Ordered, Adjudged and Decreed That the preliminary injunction entered herein on the eighth day of January, 1954, be, and the same is hereby, made perpetual and permanent, and the defendant, Northern Pacific Railway Company, and its officers, directors, agents and employees, be, and they are hereby, permanently enjoined and restrained from constructing or operating, or constructing and operating, a railroad track connecting with the existing line of railroad of the said defendant near the station of Wheeler, in Section 16, Township 19 North, Range 29 East, Willamette Meridian, Grant County, Washington, and thence extending in a westerly direction through Sections 9, 8, 7 and 18, in said Township 19 North, Range 29 East, Willamette Meridian, and into Section 13, Township 19 North, Range 28 East, Willamette Meridian, Grant County, Washington, or any other line of railroad in substantially the same location, or from causing or suffering any of said acts to be done unless and until the said Northern Pacific Railway Company shall first have obtained from the Interstate Commerce Commission a cer-

tificate that the present or future convenience and necessity require or will require the construction or operation, or construction and operation of such track or line of railroad; and that the security bond for preliminary injunction filed herein on the eighth day of January, 1954, by the plaintiff as principal, and the United Pacific Insurance Company as surety, be, and it is hereby, cancelled, and the said plaintiff as principal, and the said United Pacific Insurance Company as surety, be, and they are each hereby, released and exonerated from all liability arising thereunder; and that the plaintiff have judgment against the defendant for its costs and disbursements herein.

Dated this first day of March, 1954.

/s/ GEORGE H. BOLDT,  
Judge.

Presented by:

/s/ B. E. LUTTERMAN,  
Of Attorneys for Plaintiff.

Approved as to form:

/s/ DEAN H. EASTMAN,  
Of Counsel for Defendant.

[Endorsed]: Filed March 1, 1954.

[Title of District Court and Cause.]

PLAINTIFF'S MEMORANDUM OF COSTS AND DISBURSEMENTS

12/29/53—To Clerk, U. S. District Court, filing fee .....	\$ 15.00
12/29/53—To U. S. Marshal, fee for service of process .....	2.20
1/ 8/54—To United Pacific Insurance Com- pany for premium on preliminary injunction bond filed.....	250.00

State of Washington,  
County of King—ss.

B. E. Lutterman, being first duly sworn on oath,  
deposes and says:

That he is the attorney of record for the plaintiff  
in the above-entitled action; that he has personal  
knowledge of the costs and disbursements incurred  
by the plaintiff in the above-entitled action; that  
each of the foregoing items are correct; and that the  
services charged therein have been actually and  
necessarily performed as therein stated.

/s/ B. E. LUTTERMAN.

Subscribed and sworn to before me this 2nd day  
of March, 1954.

/s/ RUTH WALLA,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

To the Defendant Above Named, and to Dean H. Eastman and Roscoe Krier, Its Attorneys of Record:

Please take notice that application will be made to the Clerk of the above-entitled Court to tax the costs and disbursements set forth in the foregoing memorandum on the 8th day of March, 1954, at the hour of ten o'clock a.m.

/s/ B. E. LUTTERMAN.

Receipt of copy acknowledged.

[Endorsed]: Filed March 6, 1954.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given that the Northern Pacific Railway Company, a corporation, the defendant above named, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in the above-entitled action on March 1, 1954.

Done and Dated this 29th day of March, 1954.

/s/ DEAN H. EASTMAN,

/s/ ROSCOE KRIER,

Attorneys for Appellant, Northern Pacific Railway Company.

Receipt of copy acknowledged.

[Endorsed]: Filed March 29, 1954.

[Title of District Court and Cause.]

BOND FOR COSTS ON APPEAL

Know All Men by These Presents:

That We, Northern Pacific Railway Company, a corporation organized and existing under and by virtue of the laws of the State of Wisconsin, as principal, and the Saint Paul-Mercury Indemnity Company, a corporation organized and existing under and by virtue of the laws of the State of Delaware and duly authorized to transact the business of surety in the State of Washington, as surety, are held and firmly bound unto whom it may concern, and particularly to the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the plaintiff above named, in the sum of Two Hundred Fifty and no/100 Dollars (\$250.00), for the payment of which sum, well and truly to be paid, we do hereby bind ourselves and our respective heirs, personal representatives, successors and assigns, jointly and severally, firmly by these presents.

Whereas on the 1st day of March, 1954, in the above-entitled District Court of the United States for the Western District of Washington, Southern Division, a judgment was handed down in the above-entitled action; and

Whereas the Northern Pacific Railway Company, the defendant above named, has given notice that it appeals from said judgment rendered in the above-entitled cause on the said 1st day of March, 1954;

Now, Therefore, if the principal, Northern Pacific Railway Company, shall pay to the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the plaintiff above named, all costs and damages that may be awarded against the said principal on appeal or dismissal thereof, together with costs and interest and damages for delay, if for any reason the appeal is dismissed or if the judgment is affirmed or modified, and such costs, interest and damages as the appellate court may adjudge and award, then this obligation to be void, otherwise to remain in full force and effect.

In Witness Whereof we have hereunto subscribed our names and affixed our seals this 26th day of March, 1954.

NORTHERN PACIFIC  
RAILWAY COMPANY,

By /s/ DEAN H. EASTMAN,

/s/ ROSCOE KRIER,

Its Attorneys.

[Seal] SAINT PAUL-MERCURY INDEMNITY  
COMPANY OF SAINT PAUL,

By /s/ CLAIRE A. KOWALSKY,

Attorney in Fact.

On this 26th day of March, 1954, before me personally appeared Claire A. Kowalsky, to me known and known to me to be the person described herein

who executed the foregoing instrument on behalf of the Surety.

[Seal]     /s/ RUSSELL A. LAWTON,  
Notary Public in and for the State of Washington,  
Residing at Seattle.

Receipt of copy acknowledged.

[Endorsed]: Filed March 29, 1954.

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In the District Court of the United States for the  
Western District of Washington, Southern Di-  
vision

No. 1761

CHICAGO, MILWAUKEE, ST. PAUL AND  
PACIFIC RAILROAD COMPANY, a Wis-  
consin Corporation,

Plaintiff,

vs.

NORTHERN PACIFIC RAILROAD COMPANY,  
a Wisconsin Corporation,

Defendant.

### DECISION

Plaintiff Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter the "Milwaukee") pursuant to 49 U.S.C. 1(2) seeks to enjoin defendant Northern Pacific Railroad Company (hereinafter the "Northern Pacific") from constructing approximately three miles of tracks with

sidings and other subsidiary tracks. The proposed line would extend from a principal branch of the Northern Pacific to a 400-acre tract in the outskirts of the town of Moses Lake, Washington, which land, presently without industry, the Northern Pacific owns and proposes to develop into an industrial tract.

During the past ten years, because of extensive irrigation development from the Grand Coulee Dam, Moses Lake has been growing at a rapid rate. The town is centrally located in a vast area that eventually will be one of the great agricultural areas of the world. Moses Lake and its immediate vicinity has been served by the Milwaukee for many years by a branch line running into the town. From time to time as necessity demanded, additions to the Milwaukee's branch have been made and further additions to the branch for serving the area of the proposed Northern Pacific industrial tract are entirely feasible; in fact, the area already has been surveyed and Milwaukee engineers have drawn alternative plans for such project.

The Northern Pacific proposed industrial tract is located in an agricultural area in which no industries are presently located; however, at least two firms have made commitments to locate therein if the proposed line is built. Industrial sites are available on the existing Milwaukee branch line in Moses Lake and vicinity.

The Northern Pacific estimates the cost of the proposed construction at approximately \$205,000; the Milwaukee estimate is considerably higher.

The terminus of the proposed construction would be about one mile from the end of the Milwaukee Moses Lake branch line and less than one-half mile from the city limits of Moses Lake. Under the plans for the proposed line there would be no separate station or agent for the line, no regularly scheduled trains or passenger service thereon, rates would be as for the station of Wheeler on the Northern Pacific principal branch line and the Wheeler agent would provide billing and other services.

The law pertaining to a controversy of this kind is well settled by the decisions cited in the trial briefs. *Texas & Pacific Ry. Co. v. Gulf, Colorado & Santa Fe Ry. Co.*, 270 U. S. 266, 70 L. Ed. 578 (1926); *Marion & Eastern R.R. Co. v. Missouri Pacific R.R. Co.*, 318 Ill. 436, 149 N.E. 492 (1925); *Missouri Pac. R. Co. v. Chicago, Rock Island & Pacific Ry. Co.*, 41 F. 2d 193, cert. den. 282 U. S. 866 (8 Cir. 1930); *Southern Pac. Co. v. Western Pacific California R. Co.*, 61 F. 2d 732 (9 Cir. 1932); *Missouri Pacific R. Co. v. St. Louis Southwestern Ry. Co.*, 73 F. 2d 21 (8th Cir. 1934); *Union Pacific R. Co. v. Denver & Rio Grande Western R. Co.*, 198 F. 2d 854 (10 Cir. 1952). In the foregoing cases proposed tracks were held to be "extensions"; "spurs" or "industrial" tracks were found in the following: *State of Idaho v. United States*, 10 Fed. Sup. 712, aff. 298 U. S. 105, 80 L. Ed. 1070 (1936); *Missouri, K. & T. R. Co. of Texas v. Texas & N. O. R. Co.*, 172 F. 2d 768 (5 Cir. 1949); *Chicago, Milwaukee, St. Paul & Pacific R.R. Co. v. Chicago & Eastern Illinois R. Co.*, 198 F. 2d 8 (7 Cir. 1952);

Jefferson County v. Louisville & N.R. Co., 245 S.W. 2d 611 (Ky. 1952). In none of the cited cases are the facts exactly opposite to those in the present case, but under the decisions referred to there is no question as to the general principles applicable.

A detailed discussion of each of the cited cases would not serve any useful purpose. Suffice it to say that it is believed the decision made herein is not out of harmony with any of the cases cited by either party. The case closest to the defendant's situation is Missouri, K. & T. R. Co. of Texas v. Texas & N. O. R. Co., *supra*, but even that case has very important factual features that distinguish it from the present case.

Under the Interstate Commerce Act, 49 U.S.C. 1, et seq., a railroad desiring to build new track constituting an extension of its line must have an I.C.C. Certificate of Public Convenience and Necessity authorizing the construction (Section 1(18)), and the building of proposed extension tracks without a Certificate must be enjoined on an appropriate application therefor (Section 1(20)). The jurisdiction of the I.C.C., however, does not apply to the laying of tracks which are merely for spur or industrial services (Section 1(22)).

It appears to be well settled that the Court must give a liberal or broad construction to the word "extension" and a limited or narrow construction to the words "spur" and "industrial" as applied in the Transportation Act to proposed railroad tracks. Lancaster v. Gulf C. & S. F. Ry Co., 298 Fed. 488 at 490; Texas & Pac. Ry. Co. v. Gulf. C. & S. F. Ry.

Co., 270 U. S. 266; *Piedmont & Northern Railway Co. v. Interstate Commerce Commission*, 286 U. S. 299 at 311; *Interstate Commerce Commission v. Piedmont & Northern Railway Co.*, 51 F. 2d 766 at 774.

Under the statutes, this Court has no concern with and no right to consider whether public convenience and necessity require or would be furthered by the proposed track and any factors bearing on convenience or necessity of the public are irrelevant to the ultimate question that must be determined in this case. Neither the making of an application by defendant in 1948 for a Certificate authorizing construction of proposed track in the same general area nor the action of the Interstate Commerce Commission in denying that application has any bearing on whether the presently proposed track is an extension or a spur; however, the fact is that there is no substantial or material difference in the essential elements of the situation presented by the 1948 application and that presented by the track laying proposal now under consideration. The two proposals in all material respects are identical. Inasmuch as the Interstate Commerce Commission, with exclusive jurisdiction to consider and determine public convenience and necessity, held that the track proposed by defendant in 1948 was not authorized on such grounds, there would be all the more reason for this Court not to permit any consideration of public convenience or necessity to justify the building of the presently proposed track as a spur or industrial line.

The question for determination in this proceeding is very narrow and limited. Basically it is: Whether or not the track that the Northern Pacific proposes to build is an extension into territory new to that railroad and invading a field properly within or immediately adjacent to the area presently served by the Milwaukee. In dealing with similar controversies the Courts have considered a variety of principal factors, not any one of which has been held controlling in any given case. Among these factors are those indicated by the following questions:

Is the proposed track to improve rail facilities required by shippers who are already being served?

Is the proposed track to provide service to new shippers situated similarly to old ones and who are likewise entitled to service?

Will the track extend into "virgin territory"?

Is the territory to be served by the proposed track within or adjacent to a general area or community already being adequately served by another carrier?

Is it feasible or practicable for the entire area to be served and occupied by the carrier already serving the area?

Will the proposed track necessitate a substantial capital outlay?

These may not be all of the specific questions that have been posed in similar cases, but certainly they are the principal ones. As may be noted, the questions have been framed for the most part in the specific language of the decisions previously cited.

A further matter discussed in the cases relates to the presence or absence in connection with the proposed new track of stations, agents, line haul rates, billing by existing facilities, regular and continuous movement of trains and other similar circumstances. The authorities indicate that the presence of these conditions would be indicative of an extension, but the absence thereof does not necessarily establish the existence of a spur or industrial track.

If each of the questions above stated be answered in the light of the evidence in the present case, and the Court has considered the matter in exactly that way, in every instance the answer will indicate that the proposed track here in question is an extension rather than a spur or industrial track. Except for the absence of a station, independent billing and similar circumstances the Court does not find a single factor in the case supporting a determination that the proposed track is a spur. Irrespective of where the burden of proof lies in a case of this character, the evidence overwhelmingly establishes that as a matter of fact the proposed line is an extension and not a spur or industrial track. Accordingly, a Certificate of the Interstate Commerce Commission certifying public convenience and necessity is required for the building of such a line. It being admitted that none has been issued, the defendant must be permanently enjoined from building the proposed track unless and until a Certificate be issued.

Decree to such effect may issue.

Dated at Tacoma, Washington, this 26th day of February, 1954.

/s/ GEORGE H. BOLDT,  
United States District Judge.

[Endorsed]: Filed April 20, 1954.

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[Title of District Court and Cause.]

### STIPULATION AS TO RECORD

It Is Hereby Stipulated by and between the parties hereto, by and through their respective attorneys of record, that the record on appeal may include the complete and entire record and all of the proceedings and evidence in the above action.

Dated this 20th day of April, 1954.

/s/ ROSCOE KRIER,  
Of Attorneys for Defendant  
and Appellant.

/s/ B. E. LUTTERMAN,  
Of Attorneys for Plaintiff and  
Respondent.

[Endorsed]: Filed April 22, 1954.

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[Title of District Court and Cause.]

### MOTION FOR ORDER INCLUDING EXHIBITS IN RECORD ON APPEAL

Comes now the defendant and appellant and moves the court for an order as follows:

Whereas judgment was entered in the above cause on March 31, 1954, and the defendant has heretofore

and on the 29th day of March, 1954, filed with the court its notice of appeal and bond for costs; and

Whereas this is a civil action for an injunction and equitable in nature, and the entire record will be considered by the appellate court; and

Whereas it is the opinion of the defendant that it will be of assistance to the appellate court to see the original exhibits;

Now, Therefore, the defendant and appellant prays the court for an order directing the Clerk of the above court to include in the record on appeal all of the original exhibits introduced in evidence on the trial of the above cause.

Dated this . . . . day of April, 1954.

Respectfully submitted,

/s/ DEAN H. EASTMAN,

/s/ ROSCOE KRIER,

Attorneys for Defendant and  
Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed April 26, 1954.

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[Title of District Court and Cause.]

### ORDER

Comes now on for hearing the motion of the defendant and appellant in the above cause, and it appearing from said motion that judgment was entered in the above cause on March 31, 1954, and that the defendant has heretofore and on the 29th

day of March, 1954, filed with the court its notice of appeal and bond for costs; and it further appearing that this is a civil action for an injunction, equitable in nature, and it will be of assistance to the appellate court to see the original exhibits;

Now, Therefore, It Is Hereby Ordered that the Clerk of the above court be and he is hereby directed to include in the record on appeal of this cause all of the original exhibits introduced in evidence on the trial of the above action.

Done and Dated in Open Court this 26th day of April, 1954.

/s/ GEORGE H. BOLDT,  
Judge.

Presented by:

/s/ ROSCOE KRIER,  
Of Counsel for Defendant and  
Appellant.

Approved:

/s/ B. E. LUTTERMAN,  
Of Counsel for Plaintiff and  
Respondent.

[Endorsed]: Filed April 26, 1954.

[Title of District Court and Cause.]

MOTION FOR EXTENSION OF  
TIME TO FILE RECORD

Comes now the defendant and appellant, Northern Pacific Railway Company, and prays the court for

an order extending the time for filing the record on appeal and docketing the appeal.

The Notice of Appeal in the above-entitled action was filed with the Clerk of the United States District Court for the Western District of Washington, Southern Division, on March 29, 1954, and the said Clerk's time to file the record with the Clerk of the United States Court of Appeals for the Ninth Circuit will expire May 8, 1954, and due to the press of other business the court reporter has been unable to transcribe the record of testimony and will be unable to transcribe the same prior to the said May 8, 1954.

Now, Therefore, this moving party prays the court for an order extending the time to file the record on appeal and docket the appeal to and including June 15, 1954.

Dated this 30th day of April, 1954.

/s/ DEAN H. EASTMAN,

/s/ ROSCOE KRIER,

Attorneys for Defendant and  
Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed April 30, 1954.

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[Title of District Court and Cause.]

ORDER EXTENDING TIME  
TO FILE RECORD

Comes now on for hearing the motion of the defendant and appellant, Northern Pacific Railway

Company, praying the court for an order extending the time for filing the record on appeal and docketing the appeal; and it appearing from said motion that the Notice of Appeal in the above action was filed with the Clerk of the United States District Court for the Western District of Washington, Southern Division, on March 29, 1954, and that the said Clerk's time to file the record with the Clerk of the United States Court of Appeals for the Ninth Circuit will expire May 8, 1954; and

It further appearing that due to the press of other business the court reporter has been unable to transcribe the record of testimony and will be unable to transcribe the same prior to said May 8, 1954;

Now, Therefore, It Is Hereby Ordered that the time to file the record on appeal and docket the appeal is extended to and including June 15, 1954.

Done and Dated in Open Court this 30th day of April, 1954.

/s/ GEORGE H. BOLDT,  
Judge.

Presented by:

/s/ ROSCOE KRIER,  
Of Counsel for Defendant and  
Appellant.

Approved:

/s/ B. E. LUTTERMAN,  
Of Counsel for Plaintiff and  
Appellee.

[Endorsed]: Filed April 30, 1954.

In the United States District Court for the Western  
District of Washington, Southern Division

No. 1761

CHICAGO, MILWAUKEE, ST. PAUL AND  
PACIFIC RAILROAD COMPANY, a Wis-  
consin Corporation,

Plaintiff,

vs.

NORTHERN PACIFIC RAILWAY COMPANY,  
a Wisconsin Corporation,

Defendant.

TRANSCRIPT OF PROCEEDINGS

Before: The Honorable George H. Boldt,  
United States District Judge.

Appearances:

B. E. LUTTERMAN, ESQ.,  
General Attorney, Law Department Chi-  
cago, Milwaukee, St. Paul & Pacific  
Railroad Company,

Appeared on Behalf of Plaintiff.

DEAN H. EASTMAN, ESQ.,  
Vice President and Western Counsel,  
Northern Pacific Railway Company;

ROSCOE KRIER, ESQ.,  
Appeared on Behalf of Defendant.

February 23, 1954, 2:00 P.M.

(Plaintiffs' Exhibits number 1 to 10, inclusive, marked for identification prior to trial.)

The Court: Any other ex parte matters?

The Clerk: The Clerk has none.

The Court: Very well. I think we are ready to proceed with No. 1761, Chicago, Milwaukee, St. Paul vs. Northern Pacific. Are the parties and counsel ready in that matter?

Mr. Lutterman: Ready, your Honor.

Mr. Krier: The defendant is ready, your Honor.

The Court: Very well. Will you proceed.

Mr. Lutterman: As the Court remembers, this was before you on the motion for a preliminary injunction. I assume your Honor is still familiar with the issues as framed by the pleadings, or would you like a statement of the case?

The Court: Short. I have it in mind. I think this is a matter involving the proposed construction of the Northern Pacific of some track from its line down toward Moses Lake. The Milwaukee has taken the position that it is an extension and the N.P. takes the view it is a spur, and if it is a spur, why they don't need a certificate from the I.C.C., and if on the other hand it is an extension [3\*] without a certificate, they cannot be permitted to proceed. Is that it in substance?

Mr. Lutterman: That is correct, your Honor.

The Court: So it boils down to the question of fact. whether or no this proposed line is or is not a

**\*Page numbering appearing at foot of page of original Reporter's Transcript of Record.**

spur or is or is not an extension, whichever way you want to put it. Is that right?

Mr. Lutterman: Yes, a question of fact and law.

The Court: That is the way I understand the issue.

Mr. Lutterman: I think that is very clearly stated, your Honor. I think that is the issue as far as——

Mr. Krier: Sounds very like it.

The Court: Okay, ready to go?

Mr. Lutterman: First I'd like to file, your Honor, my trial brief.

Mr. Krier: We have also prepared a trial memorandum.

The Court: Have you got an extra copy, gentlemen? I like to put the original in the file and have one that I can mark on and put my peculiar hieroglyphics on that won't mean anything to anybody else.

Mr. Krier: I might explain to your Honor for just a second here that this memorandum which we have filed doesn't, isn't really a brief. It is just a summary of the authorities that we think is just about complete. We may have missed one, but I don't think some of the cases involved—— [4]

Mr. Lutterman: Ours is a similar memorandum.

The Court: That is fine. You can go ahead. I will undertake to review these memoranda at the earliest time available. In the meantime, I have run over a few of the cases that are indicated in USCA and so, so I think I have a sufficient idea of

the matter to understand what you are talking about anyway.

Mr. Lutterman: If the Court please, I think it can be stipulated between counsel that what has been marked as Exhibit No. 1——

Mr. Krier: Yes, that is it.

Mr. Lutterman: ——is a map prepared by the defendant Northern Pacific showing the location of their present proposed line, and its connection with their existing Connell branch line.

Mr. Krier: That is correct.

The Court: Any objection to admitting it?

Mr. Krier: No, no, your Honor.

The Court: Admitted, Exhibit 1.

(Plaintiff's Exhibit number 1 admitted in evidence.)

Mr. Lutterman: What has been marked as Exhibit 2 is——

The Court: Is that a blueprint type of thing?

Mr. Lutterman: I think it is a—— [5]

The Court: At your convenience you might give me an extra copy of that since I presume that is sort of basic to the whole thing, isn't it?

Mr. Lutterman: Yes, I have one large map that reproduced both of these, and I have an extra copy of that.

The Court: Extra copy of that that I can use for my convenience? That will be fine, but not now, but at your convenience.

Mr. Lutterman: What has been marked as Exhibit No. 2 is the drawing of the track, proposed

track of the Northern Pacific in 1948 extending from its Connell Northern branch to Moses Lake as introduced as an exhibit in ICC finance docket No. 16119, is that correct?

Mr. Krier: I assume it is if you read it correctly.

The Court: That is the 1948 hearing before the ICC?

Mr. Lutterman: That is correct.

The Court: Very well.

Mr. Lutterman: No objection?

Mr. Krier: No objection.

The Court: Admitted.

Mr. Krier: No objection, your Honor.

(Plaintiff's Exhibit number 2 admitted in evidence.)

Mr. Lutterman: What has been marked as Exhibit 3 [6] is a statement showing the estimated cost and break-down for the track which was proposed in 1948 and which was the subject matter of the ICC docket to which I have referred.

The Court: Any objection?

Mr. Krier: No objection.

The Court: Admitted.

(Plaintiff's Exhibit number 3 admitted in evidence.)

I.C.C. Finance Docket No. 16119  
 Exhibit No. 8  
 Witness: Derrig

Northern Pacific Railway Company

Estimate of Cost of Proposed Extension of Line from Point At or Near Mitchell Spur, Washington, on Connell Northern Branch, to Moses Lake, Washington, as Per Sketch Dated Office of Assistant Chief Engineer, Seattle, Washington, October 14, 1948.

Main spur or branch .....22,040 track feet  
 Moses Lake service track .... 4,000 track feet

Total .....26,040=4 miles and 4920 ft.

Maximum grade—1.2 grade.

Add & Betts

Additions

	Labor	Material
Right of way, including acquisition .....		\$10,000
Grading—		
400 C.Y. solid rock—\$1.25 .....	500	
2,000 C.Y. loose rock—40c .....	800	
37,600 C.Y. com. excavation—30c .....	11,280	
40,100 C.Y. com. borrow—20c .....	8,020	
200,000 C.Y. overhaul—1c .....	2,000	
325 Lin. ft. 36" RCP—\$3.50/\$5.50 .....	1,232	1,936
112 Lin. ft. 48" RCP—\$4.00/\$9.00 .....	448	1,008
350 C.Y. excavation for culverts—\$2 .....	700	

Track work—22,040 ft. track main spur complete with ballast—\$2/\$3 .....	44,080	66,120
4,000 ft. track service Moses Lake complete with ballast—\$1.75/\$2.70 .....	7,000	10,800
2 switches complete 90# .....	500	1,840
Fencing—38,000 lin. ft. 0.12/0.05 .....	4,560	1,900
Cattle Guards, etc. ....	500	500
Station facilities .....	7,500	5,500
Telegraph line .....	2,000	2,000
Grade crossings .....	2,200	350
Road crossing signal .....	1,170	2,330
Contingencies .....		10,000
Engineering—7% .....	6,300	
	<hr/>	<hr/>
	\$100,790	\$114,284
		100,790
		<hr/>
		\$215,074
Total est. cost .....		

Office of Asst. Chief Engineer  
Seattle, Washington  
October 19, 1948

Admitted February 23, 1954.

Mr. Lutterman: I may state, your Honor, for the record, that the Exhibits 1, 2 and 3 were attached to and identified as Exhibits A, B and C to the pretrial deposition which was taken on behalf of the plaintiff of Mr. J. T. Derrig, an employee of the defendant.

The Court: Very well.

Mr. Lutterman: This, your Honor, is a copy of what has been marked Exhibit 4 and is the map to which I referred.

The Court: For my convenience?

Mr. Lutterman: For your convenience, Exhibit 4.

Mr. Eastman: Exhibit 4.

Mr. Lutterman: Mr. Tusler. [7]

#### C. H. TUSLER

being first duly sworn on oath, was called as a witness on behalf of the Plaintiff and testified as follows:

#### Direct Examination

By Mr. Lutterman:

The Clerk: State your full name and spell your last name.

The Witness: C. H. Tusler, T-u-s-l-e-r.

The Court: First name?

The Witness: T-u-s-l-e-r.

The Court: First name?

The Witness: Charles.

Mr. Lutterman: Since there is no jury it may be better to move the map up here a little farther if you can.

(Testimony of C. H. Tusler.)

The Court: Won't interfere with you there, will it?

Mr. Eastman: I will move over on the other side. I think it probably would be better to have it up a little closer.

Mr. Lutterman: It will probably be referred to quite a bit during the course of the proceeding.

The Court: Might be able at the recess to set it up in some manner in the jury box.

Mr. Lutterman: If we could that would facilitate matters for everyone. [8]

The Court: Have you ever tried to put that in the jury box?

The Bailiff: No, sir, we haven't.

The Court: If we could it wouldn't interfere.

Mr. Lutterman: During recess——

The Court: Try it and see if it works all right.

Q. I believe you stated your name?

A. Yes, sir.

Q. And where do you reside, Mr. Tusler?

A. In Seattle.

Q. By whom are you employed?

A. Milwaukee Railroad.

Q. In what capacity?

A. Assistant Engineer.

Q. How long have you been employed by the Milwaukee Railroad? A. Thirty-one years.

Q. And in what department?

A. Engineering Department.

Q. And as such what has been your experience in engineering lines?

(Testimony of C. H. Tusler.)

A. I have been draftsman and roadman, instrumentman, division engineer, assistant engineer; I guess that is about all.

Mr. Krier: We waive his qualifications. [9]

Mr. Lutterman: As a qualified railroad engineer?

Mr. Krier: Oh, yes, sure.

Mr. Lutterman: If the Court please, if it could be understood that we could refer to the plaintiff as the Milwaukee or the Milwaukee Railroad instead of by its full corporate name——

The Court: I think it would be much more convenient too because I hardly recognize it by the other name.

Mr. Lutterman: Thank you.

Q. Mr. Tusler, do you——

Mr. Lutterman: Do you mind if he steps down, your Honor, so he can see?

The Court: No, no, he may do so.

(Whereupon, the witness approached the map.)

Q. (Continuing): Calling your attention first, Mr. Tusler, to what has been marked as Exhibit No. 1, I think you recognize that, do you?

A. Yes, sir.

Q. As the N.P. drawing of their present proposed track toward Moses Lake, is that correct?

A. That is right.

Q. And you have examined this print or a duplicate copy thereof?           A. I have.

(Testimony of C. H. Tusler.)

Q. And showing you Exhibit No. 2, have you seen that [10] print or duplicate copy thereof?

A. I have.

Q. And that represents what?

A. 1948 proposed track.

Q. Now, calling your attention to what has been marked Exhibit No. 4, was this map prepared by yourself?

A. It was.

Q. And the scale is indicated thereon as one inch equals one thousand feet?

A. That is right.

Q. Calling your attention first to what appears in the right-hand corner of the map as a black line, will you state what that is?

A. That is the Northern Pacific's Connell line from Connell to Coulee City.

Q. That is the location as shown on both Exhibits 1 and 2 already referred to?

A. Yes.

Q. And showing you the red line with the legend "1948 proposed N.P. track," will you state what that is?

A. That is the same track as is shown on the top.

Q. Exhibit No. 2?

A. No. 2.

Q. And showing you the blue line on Exhibit 4, will you state what that is? [11]

A. That is the present proposed N.P. track as illustrated on Exhibit No. 1.

Q. Calling your attention to this yellow area at one end of the red lines, will you state what that is?

(Testimony of C. H. Tusler.)

A. That is the proposed 1948, proposed industrial area as shown on Exhibit No. 2.

Q. Now, that yellow area is the same yellow area as shown on 2?      A. Correct.

Q. And drawn to that scale?

A. Drawn to this scale.

Q. And the red line shown on Exhibit 4 is the same as the red line shown on this Exhibit No. 2, but drawn to the scale of that map?

A. That is correct.

Q. And the blue line on Exhibit 4 is the same track as shown on Exhibit No. 1 and drawn to the scale of the map which has been marked Exhibit 4?

A. Yes, sir.

Q. Calling your attention to the line which is shown in green, or lines rather, will you state what those lines represent?

A. They represent the existing Milwaukee tracks in the vicinity of Moses Lake.

Q. Calling your attention to the area which has been [12] shown enclosed in the blue color, will you state what that is?

A. That is the proposed N.P. industrial development as indicated on Exhibit—

Q. No. 1?      A. —No. 1.

Q. And that, incidentally, is a portion of section—will you give the section and township, range?

A. Section 3, Township—

Q. Wait a minute. Section what?

A. Section 13, Township 19 North and the range 28 East.

(Testimony of C. H. Tusler.)

Q. In Grant County, Washington?

A. In Grant County, Washington.

Q. And with a little more particularity as to the green tracks, in addition there are green lines extending from the main green line. Will you state what those are?

A. They represent side tracks.

Q. And spur tracks? A. And spur tracks.

Q. Calling your attention to the brown line, will you state what that represents?

A. That represents the corporate limits of the City of Moses Lake.

Q. You have a north mark on the map?

A. Yes, sir.

Q. And the top of the map as now placed on the easel [13] is north? A. Is north.

Q. And you have also indicated, calling your attention to this line, will you state what that is?

A. That is the highway known as Primary State Highway No. 18 or U. S. Highway No. 10.

Q. That is the U.S. highway through Moses Lake?

A. Through the town of Moses Lake.

Q. And calling your attention to this line which extends along the southerly boundary of the area you have enclosed in blue, will you state what that is?

A. That is a county road running between Wheeler and Moses Lake.

Q. I notice that the track which you have shown

(Testimony of C. H. Tusler.)

in the area colored yellow on Exhibit 4, that is the green track which you have shown in the yellow area on Exhibit 4, was not on the map which is Exhibit No. 2. Will you explain?

A. That track was built after Exhibit No. 2 was made, was built by the Milwaukee to serve an industry in that area.

Q. You may resume the stand.

Mr. Lutterman: I'd like to offer this, but maybe you'd rather cross-examine first before—or I will make the offer at this time, if the Court please, of Exhibit No. 4.

The Court: Any objection?

Mr. Krier: No, I think not, your Honor. [14]

The Court: Admitted.

(Plaintiff's Exhibit number 4 admitted in evidence.)

Mr. Lutterman: Thank you. You may cross-examine.

#### Cross-Examination

By Mr. Krier:

Q. Mr. Tusler, you testified that this area enclosed with the blue area is the Northern Pacific proposed industrial area, is that correct?

A. Yes.

Q. Where did you get that information?

(Whereupon, the witness approached table holding other exhibits.)

A. Here. (Indicating.)

(Testimony of C. H. Tusler.)

The Court: You are referring to Plaintiff's Exhibit 1?

The Witness: Yes, sir.

Q. Well, that says "Farm Unit N.P."

A. Yes.

Q. Where does it say anything about industrial area there?

Mr. Lutterman: Counsel, I don't like to interrupt, but it is a matter of record in the affidavit of your Mr. Moore that those portions of Section 13 are reserved [15] and being reserved by the Northern Pacific for industrial development. It is a matter of record already.

Mr. Krier: I don't think it is, counsel.

Q. (Continuing): Mr. Tusler, is that the only information that you have, is off of this Plaintiff's Exhibit 1?      A. Yes, sir.

Q. Then you don't know whether that is all proposed industrial area or whether it isn't, do you?

A. Except—the only information I have is there. The track is built to serve that N.P. property.

Q. You don't know what portion of the N.P. property that track is going to serve, do you?

A. It can serve all of it.

Q. But you don't know it, do you?

A. No.

Q. And the only information you have is from Exhibit. Plaintiff's Exhibit 1?

A. That is correct.

Q. And it doesn't say industrial area on Plaintiff's Exhibit 1, does it?      A. No.

(Testimony of C. H. Tusler.)

Mr. Krier: All right, that is all.

The Court: Anything further?

Mr. Lutterman: Nothing further.

The Court: Step aside, Mr. Tusler. [16]

(Witness excused.)

Mr. Lutterman: At this time, I'd like to call the Court's attention, if there is any question about the affidavit on file herein of J. T. Moore of the Northern Pacific in which it is stated among other things on page 3 in the middle of the page:

“The defendant is the owner of four hundred acres of land located in Section 13, Township 19 North, Range 28 East, W.M. in Grant County, which section lies approximately two and a quarter miles westerly from its Connell Northern branch. Plaintiff acquired such property as a part of its land grant. Although in the formation of the East Columbia Irrigation District said lands were included in and form a part of certain farm units, the defendant, under an arrangement and agreement with the United States Bureau of Reclamation, has been permitted to reserve these lands for industrial purposes and if so used for that purpose within a period of ten years may then be withdrawn from the irrigation district. In conformity with such agreement and plan the defendant is proceeding to develop such lands for industrial [17] purposes.”

Now, the basis of the map is the information supplied in the affidavit.

Mr. Krier: Well—

The Court: Whatever value it has we will get at later on. That at least explains why you enclosed it in blue. Whether you were right or wrong about it we can settle later.

Mr. Lutterman: I would like to call Mr. Derrig as an adverse witness. [18]

J. T. DERRIG

being first duly sworn on oath was called as a witness (adverse) on behalf of the Plaintiff and testified as follows:

Direct Examination

By Mr. Lutterman:

The Clerk: State your full name and spell your last name.

The Witness: J. T. Derrig, D-e-r-r-i-g.

Q. Where do you reside, Mr. Derrig?

A. Seattle.

Q. And by whom are you employed?

A. Northern Pacific Railway Company.

Q. In what capacity?

A. Assistant Chief Engineer.

Q. And as such, what portion of the Northern Pacific line do you—

A. Livingston west.

Q. Livingston?

A. Livingston and west, all lines extending west.

Q. Which would include, of course, the trackage in the state of Washington?

A. Yes, sir.

Q. And how long have you occupied that position?

A. 1943 to date.

(Testimony of J. T. Derrig.)

Q. You are then familiar, are you, Mr. Derrig, with [19] the track which the Northern Pacific proposed to build in Grant County in 1948?

A. Yes, sir.

Q. And calling your attention to Exhibit No. 2, will you state whether or not the area shown in red on Exhibit No. 2 is the line of railroad which the defendant proposed to construct in 1948?

A. Yes, sir.

Q. And calling your attention particularly to that portion of the exhibit which is colored in yellow, will you state whether or not that is an area in which the defendant proposed to develop industries and have terminal facilities at that time?

A. Yes, sir.

Q. That is all from that exhibit, thank you. Calling your attention to what has been marked Exhibit No. 4, can you see it from there or do you wish to step down?

(Whereupon, the witness approached the map.)

Q. (Continuing): What is shown in red, is this the track as located on Exhibit No. 4?

A. Substantially as shown, yes.

Q. And calling your attention to the blue line, will you state whether or not that is, substantially represents the present proposed track which the Northern Pacific proposes to—— [20]

A. Proposed spur track, yes.

Mr. Lutterman: I think if we have an under-

(Testimony of J. T. Derrig.)

standing right now; I have tried to avoid calling it an extension or spur track. I think if we all refer to "a track." I won't insist that my witnesses call it an extension if they won't call it a spur track.

The Court: Well, that sounds reasonable enough. Let's call it the proposed track and then—or the track in question. Either one, proposed track, or track in question. Then we won't have a hassle every time that the word is used by either side.

Mr. Lutterman: I have used the word "track" in each case. I thought no one could object to that.

The Court: Very well.

Q. Then what is shown in blue is the track which the Northern Pacific proposes to build at this time? A. Yes, sir.

Q. Showing you the area which is enclosed in blue, being designated as farm units number 68, 69, 70 and 71, is that land of N.P. ownership?

A. To my knowledge, to the best of my knowledge it is owned by Pacific, Northern Pacific.

Q. Do you know what the purpose of this track shown in blue is?

A. To serve this property. [21]

Q. And when you are pointing you are pointing to the property enclosed in blue there?

A. That is right.

Q. The track which is shown in black in the northeasterly portion of Exhibit No. 4, that is the existing Northern Pacific Connell Northern branch, is that what you refer to it as? A. Yes, sir.

(Testimony of J. T. Derrig.)

Q. And shown where that line crosses what has been designated as the Wheeler Road is the designation Wheeler. Does the Northern Pacific have a station on that branch line designated as Wheeler?

A. Yes, sir.

Q. And at that point? A. Yes, sir.

Q. I think you may resume the stand, Mr. Derrig. Will you show the witness, I think it is No. 3?

Calling your attention to Exhibit No. 3, will you state if that is the estimate of the proposed 1948 construction?

A. Estimate of the proposed 1948 construction is correct.

Q. Yes. And has your—or by the way first, would your office be the office of the Northern Pacific which would make the estimate for the present proposed track? [22]

A. Repeat your question, please.

Q. Would your office or your department of the Northern Pacific be the department which would make the estimate for the present proposed track?

A. Yes, I have prepared such an estimate.

Q. You are the one that made it? A. Yes.

Q. That is what I wanted to develop, Mr. Derrig. So you have an estimate, have you then, of the present proposed track which is shown in blue on Exhibit 4? A. Yes, sir.

Q. And what is that estimate?

A. Two hundred five thousand some dollars. I can't just recall. Two hundred thousand five hun-

(Testimony of J. T. Derrig.)

dred if I recall correctly. I have the instrument with me.

The Court: You can refer to it if you want, Mr. Derrig, and give us the exact figure.

Q. I think if you will refer to your affidavit it gives the figure there.

Mr. Krier: If your Honor please, may he step down just a second? It is in our file and he could recognize it quicker.

The Court: Certainly, step down, Mr. Derrig, and pick out the paper there.

(Whereupon, the witness complies.) [23]

A. \$205,500.

Q. Does that include right-of-way?

A. Yes, sir.

Q. I believe that the map shows it by scale, that is, it indicates the width of the right-of-way of your present proposed track, but I wonder if for the record you would state what the width is, Mr. Derrig?

A. Width of right-of-way?

Q. Yes, for your proposed, present proposed track which is shown in blue on Exhibit No. 4?

A. Right-of-way is approximately eighty feet.

Q. Eighty foot right-of-way?

A. (Nods head.)

Q. And calling your attention to the point where the blue tracks connect with the black tracks, what type of a connection do you call that, for the record, so we will know?

A. Call that a Y connection.

(Testimony of J. T. Derrig.)

Q. Commonly known as a Y connection, is that correct?      A. Yes, sir.

Q. And as the track extends from the Y connection with your existing Connell Northern branch and extends across sections, I believe the southerly edge of sections 9, 8, 7 and then drops down into section 13, what is the type of terrain, or what is the character of the land over which the right-of-way passes? [24]      A. It is a plateau, mesa.

Q. And it is all farm land, isn't that correct?

A. I haven't got the classification, but part of it is farm land and part of it is——

Q. I am not speaking now of the track as it extends into what are designated as farm units 68, 69, 70 and 71; I am speaking of the track as shown outside of those portions. It is farming land that it crosses, isn't it, Mr. Derrig?      A. Part of it is.

Q. What part isn't?

A. There is a short section in there that is not considered farming land. I haven't got the classification. I think probably Mr. Moore can give you that information.

Q. What I am getting at, for the most part it is farm land and most of it is under or can be under irrigation in the Columbia Valley?

A. Most of it can, yes.

Q. Yes. And there are no industries of any kind located, now located any place along the track shown by the blue line?      A. No, sir.

Q. Do you propose to fence the blue line or,

(Testimony of J. T. Derrig.)

all that portion of it except that which is within the portions of 13, which have been designated as farm units 68 to 71, inclusive? [25]

A. I would say it should be fenced.

The Court: Excuse me. Now, let me get that again. You propose to fence all of the area within the blue line or——

Mr. Lutterman: Up to it.

The Court: Up to the blue line.

Mr. Lutterman: Up to the N.P. ownership in 13.

The Court: Yes.

Q. In other words, the entire track extending from the Y connection with your branch line over to where it enters the N.P. property in Section 13?

A. Yes.

Q. Do you have any plans, Mr. Derrig, in your office, either tentative or final, or have you made any plans or drawings of any nature showing tracks connecting with the track shown in blue within the, any portion of the areas which have been designated as farm units 68, 69, 70 or 71?

A. No final plans, no.

Q. Do you have any plans?

A. I have some preliminary sketches, but never given them any consideration. We just were considering a main spur only and from that we——

Q. Just a minute.

Mr. Lutterman: I will move that his remark, be considered a main spur, be stricken if the Court please.

The Court: I will strike it, but you don't [26]

(Testimony of J. T. Derrig.)

need to feel that sensitive about it. I will recognize all along the line that whatever anybody calls this, it is going to be me that—my responsibility—

Mr. Lutterman: It is your Honor's prerogative.

The Court (Continuing): —to put the tag on it, so if some witness inadvertently uses an offending word, I am not going to hold it against anybody. Go right ahead.

Q. Do you have any such plans with you?

A. No, sir.

Q. Could you—do you have them in your office?

A. If I'd have tentative plans in the office I don't think I have a tracing of it.

Q. If you have such a plan will you kindly produce it when Court convenes tomorrow?

A. Yes, sir.

Q. It is proposed, however, to your knowledge, Mr. Derrig, that the track will be used to serve industries at, within that area, is that correct?

A. Yes, sir.

Q. And if the track is to serve—or by the way, do you know, is it intended to serve more than just one industry?

A. I can't make that statement direct. That is another department.

Q. You know of your own knowledge that it is intended to serve an industrial area, not just one industry, you know [27] that, don't you?

A. I don't know the exact industries, no.

Q. I am not asking you for the exact industries or what industries. I am just saying that the pur-

(Testimony of J. T. Derrig.)

pose of the track is to serve industries which may locate in that area, not just one particular industry?

A. One, two or more industries, yes.

Q. And if the track is constructed for that purpose and in order to use it for that purpose, that is to serve more than one industry, you would necessarily have to have tracks, industry sidings extending off of the track shown in blue, wouldn't you?

A. I have to have additional short spur tracks as may be required by the particular individual industry.

Q. That is what I mean. In other words, little spurs off of the blue track. You would have to have additional spurs to serve industry as required?

A. The industry might require the spurs; as the industry would require the spurs.

Q. Yes, but in order to utilize it for that purpose it would be necessary to have such additional tracks, isn't that correct?

A. It would be necessary.

Q. Yes.

Mr. Lutterman: I think that is all at this [28] time, if the Court please. Thank you, Mr. Derrig.

Mr. Krier: There will be no cross at this time, your Honor, but we'd like the privilege of recalling—

The Court: You may have that privilege. That is all for now, Mr. Derrig.

Mr. Lutterman: If the Court please, I overlooked one thing I'd like to ask.

(Testimony of J. T. Derrig.)

The Court: Excuse me, Mr. Derrig, apparently there is something more.

Mr. Lutterman: May I proceed further with him?

Mr. Krier: Sure.

Mr. Eastman: Yes.

Q. I think it is a matter of record, Mr. Derrig, but I think you are the man who can testify to it, there has actually been some construction work accomplished on the track which is shown in blue on Exhibit 4, is that correct?

A. Yes, in the vicinity of the Y tracks.

Mr. Lutterman: That was the only question.

The Court: That is all for now, Mr. Derrig.

(Witness excused.)

Mr. Lutterman: Mr. Moore. I'd like to call Mr. Moore as an adverse witness. [29]

### JEROME T. MOORE

being first duly sworn on oath, was called as an adverse witness on behalf of the Plaintiff and testified as follows:

#### Direct Examination

By Mr. Lutterman:

The Clerk: State your full name and spell your last name.

The Witness: Jerome T. Moore, M-o-o-r-e.

The Court: Have a chair, Mr. Moore.

Q. Where do you reside, Mr. Moore?

(Testimony of Jerome T. Moore.)

A. In Seattle.

Q. And by whom are you employed?

A. The Northern Pacific.

Q. In what capacity?

A. I am Western Manager Industrial Properties.

Q. For what period of time have you held that position?

A. Oh, five years. Well, the title was changed only a year ago. Previous to that I was Industrial Agent in Seattle.

Q. And for what period of time have you been connected with the Northern Pacific in that department?

A. Well, I came in 1920 was my employment, commenced my employment. I last commenced my employment in the right-of-way department. I had a previous period of employment in the Right-of-Way Department commencing 1914. [30]

Q. But you have been connected in that department for sometime? A. Since 1914, yes.

Q. And for what period has that been in the Seattle office? A. Since 1937.

Q. And your Seattle office has jurisdiction over what portion of the Northern Pacific line?

A. From Paradise, Montana, west.

Q. Which, of course, would include your trackage and property in Washington? A. Yes.

Q. What is the nature of your—strike that.

What is the nature of your duties or the purpose of your department?

(Testimony of Jerome T. Moore.)

A. Well, we are the Right-of-way Department, Real Estate Department, or call it Lease Department in the industrial development work.

Q. As such then your department would have knowledge of proposed industrial developments?

A. Yes.

Q. By the Northern Pacific? A. Yes, sir.

Q. Calling your attention to Exhibit 4, can you see it from there? [31] A. Yes, I can.

Q. Would you rather—

A. I can see it quite well.

Mr. Lutterman: Would you excuse me if I step around?

Mr. Krier: Yes.

Mr. Eastman: Yes.

The Court: Perfectly all right.

Q. Calling your attention to the track which is shown in red on Exhibit 4, are you familiar with that track? A. Yes, sir.

Q. And that is the track which the Northern Pacific proposed to build in 1948?

A. Yes, sir.

Q. And you were connected in your present capacity with the company at that time?

A. I was Industrial Agent then.

Q. But in the same line of work?

A. Yes, I secured some of the options.

Q. For the right-of-way? A. Yes.

Q. Showing you the area which is shown in yellow on the same exhibit, that was an area on which at that time you had acquired options to

(Testimony of Jerome T. Moore.)

locate industries and terminal facilities, is that correct?      A. Yes, sir. [32]

Q. Showing you the track, or calling your attention to the track which is shown in green within the yellow area, that track was not there at that time?

A. No, it had not—I don't think it came up to it. Well, I am not sure whether you connected with the Moses Lake place or not.

Q. Maybe you don't see from there.

(Whereupon, the witness approached the map.)

Q. (Continuing): I mean the green track that comes up into it?      A. No, sir.

Q. That was not there at that time?

A. No, sir.

Q. And it was proposed to locate industries in the area shown in the yellow?      A. Yes, sir.

Q. Calling your attention now to those portions of Section 13 on Exhibit 4 which have been designated as farm units 68, 69, 70 and 71, has that been land of N.P. ownership?

A. That is land grant property given to us in 1864.

Q. And the—you are familiar with the development generally in the Columbia basin, particularly in the area of the City of Moses Lake?

A. Generally, yes.

Q. And the land generally has been divided

(Testimony of Jerome T. Moore.)

into what [33] has been termed farm units, is that correct?      A. Yes, sir.

Q. And that is true not only of the area in Section 13, which is enclosed in blue, but of most of the area, for instance traversed by the, both the red track and the blue track and the area between them?

A. A large part. There is plains that haven't been classified as farm units.

Q. That is correct, but by and large most of the land?

A. Yes, all that was suitable for, when it had good enough soil it was classified as farm units.

Q. And the various areas were divided, or I suppose we should properly say subdivided into what were termed farm units by the United States Bureau of Reclamation?      A. Yes, sir.

Q. And the purpose was to have one unit which in their opinion at least was adequate for one farming unit?      A. Yes, sir.

Q. And that is the reason for the designation of these 68, 69, 70 and 71?      A. Yes, sir.

Q. All units which have been so designated are irrigable and entitled to irrigation water from the Columbia Basin Irrigation Authority? [34]

A. Yes, sir.

Q. And would you say that is true generally speaking of the property in Sections 8, 7 and 12, and in 18, 17 and 16 which are on either side of the track shown in blue on Exhibit 4, these sections here I am referring to (indicating)?

(Testimony of Jerome T. Moore.)

A. Yes, they are.

Q. The tier of sections above and the tier of sections below the blue track?

A. Some unclassified land that you go through in Sections 7 and 8 that are not farm units.

Q. But the majority of the land?

A. Yes, sir.

Q. And there are no industries of any character located at any point along the track shown in blue, are there?

A. No, sir.

Q. Many of the areas in those sections already have water on them and actually are and have been in production?

A. Yes, some of them.

Q. In other words, they are being farmed?

A. Yes, some of them are.

Q. Yes. With respect to the farm units 68, 69, 70 and 71, have they been put in production for agricultural purposes?

A. No, sir.

Q. They have not?

A. No, sir. [35]

Q. And have not been plowed or used yet for agricultural purposes?

A. No, sir.

Q. I believe in your affidavit, Mr. Moore, you stated that you have reserved those from the irrigation district under some arrangement with the Bureau?

A. Yes, general language was used to include entire ownership.

The Court: I didn't get that.

The Witness: General language was used to include our entire ownership.

Q. Just answer my question. I think with re-

(Testimony of Jerome T. Moore.)

spect to these farm units 68, 69, 70 and 71 in your affidavit you make some statement to the effect that under some arrangement you have with the Bureau of Reclamation you are reserving those for some purpose other than agricultural development?

A. Yes, sir; yes, sir.

Q. Do you know that—at the present time does the Northern Pacific own these or has it already deeded it out—strike that and let me ask you this question.

Do you know that under that arrangement with the Bureau it was requested that these units be deeded out from the Northern Pacific to officers of the Northern Pacific or to your Northwest Improvement Company?

A. I think title is still in the Northern Pacific now. [36]

Q. But the arrangement with the Bureau is that they will be?

A. Well, as I understand it, the Northern Pacific will retain ownership of——

The Court: Excuse me gentlemen, if you would come back here now. It is a little hard when you talk against the Board. I have got to get it on the rebound.

The Witness: Excuse me.

(Whereupon, the witness resumed the witness stand.)

The Court: At my great age it is a little hard to do. Now, would you mind covering that last mat-

(Testimony of Jerome T. Moore.)

ter again because it was a little hard with some boy whistling in the pipes too, that adds to the problem.

A. I forgot. Will you restate the question?

Q. Did you answer it?

(Whereupon, the reporter read back previous question and answer.)

A. Yes, my understanding is the Northern Pacific will retain ownership in a hundred sixty acres. The other two units were to be conveyed to—I think, I am not too sure—to two of our subsidiary companies.

The Court: Whom is that arrangement with?

Mr. Lutterman: Bureau of, United States Bureau of Reclamation. [37]

Q. As I also understand your statement with respect to that arrangements, if those units are not developed industrially within ten years they will revert to farm units?

A. Well, I think that—I think they will remain farm units perhaps until we are successful in withdrawing them, withdrawing the lands.

Q. But maybe if—I will go back of that a little bit, Mr. Moore, lands in the district which have been subdivided into farm units must be, cannot—I am getting ahead of myself.

Wherever lands such as the section of land have been subdivided into farm units by the Bureau, it may not all be held in one ownership, is that correct?

(Testimony of Jerome T. Moore.)

A. You mean there is a prohibition against selling part of a farm unit?

Q. No. Under the Bureau's setup and designation of the various areas as farm units, only one unit can be held or owned by one person or party, isn't that, generally speaking, correct?

A. Unless you have held it a long time. I think then you can hold up to a hundred sixty acres.

Q. And anything over and above that is required to be sold at a price fixed by the Bureau, isn't that correct?      A. Yes, when sale is made, yes.

Q. Not in excess of the price fixed by the [38] Bureau. And under the arrangement which you have, if those areas included in the farm unit shown on Exhibit 4 are not used for industrial purposes within ten years they will be sold for use as farm units, isn't that correct?

A. No, that is under somebody else's jurisdiction; that is lands what we call Land Department property, and Mr. Edgell, our Vice President in charge of lands, has jurisdiction over the sale of farm units.

Mr. Eastman: Mr. Lutterman, I might say we will have two witnesses, either one of whom I think will be able to explain that if you think the Court should have it.

Mr. Lutterman: The only thing, Mr. Eastman, is that Mr. Moore in his affidavit said they had an arrangement whereby they could be reserved for a period of ten years for industrial purposes, and

(Testimony of Jerome T. Moore.)

if at the end of that time they weren't so developed they were to revert to farm units.

A. Yes, I spoke to the best of my knowledge, but I was rather off my subject.

Q. But that is your understanding?

A. That was my understanding, yes.

Q. Are you familiar with the proposed track which is shown in blue on Exhibit 4?

A. Yes, sir.

Q. I assume that your—or someone in your department acquired option or right-of-way for [39] it?

A. Yes, sir.

The Court: I wonder if I could interrupt you just to accommodate counsel here in a criminal matter? It will only take a moment. Would you mind stepping forward, Mr. Hager.

(Whereupon, a short criminal matter was considered.)

The Court: I think that counsel stepped out. We might just as well—oh, there you are. Do you want to take a few moments' recess at this time? I think Mr. Lutterman stepped out so we will declare a recess for his benefit.

(Whereupon, at three-five o'clock p.m. a recess was had until three-twenty o'clock p.m., at which time respective counsel being present, witness Jerome T. Moore resumed the witness stand for continued direct examination by Mr. Lutterman, and the following proceedings were had, to wit:)

(Testimony of Jerome T. Moore.)

The Court: Are you ready to proceed?

Mr. Lutterman: Yes.

The Court: Do so, very well.

Q. Mr. Moore, the track showed in blue which is the present proposed N.P. track is approximately four miles in length, is that correct?

A. Down to the County Road 3.9 miles, yes.

Q. I mean it is roughly?

A. Yes, that is right. [40]

Q. And the same thing is true with respect to the track shown in red on Exhibit 4, is that correct?

A. I don't know about the mileage of that. I haven't checked that lately.

Q. Well, do you recall that you, I mean you don't recall? A. I don't recall the mileage.

Q. Does the defendant own any other lands along the track shown in blue other than those enclosed within the blue lines of Section 13?

A. No, sir.

Q. Calling your attention to the portion colored in yellow on Exhibit 4, you have already testified that this was the proposed industrial development in 1948, is that correct?

A. Yes, trackage and industrial development, yes.

Q. And the portion of the yellow area lies outside of the corporate limits of the City of Moses Lake, is that correct? A. Yes, sir.

Q. And the corner of Section 13, corner is on the city limits of Moses Lake as shown on Exhibit 4? A. Yes, sir.

(Testimony of Jerome T. Moore.)

Q. In your affidavit, Mr. Moore, on file in this case you have stated that the purpose of building the track shown in blue was to develop industries in the farm units [41] owned by the N.P. within Section 13 shown on the map, is that correct?

A. Yes, sir.

Q. Was the purpose to develop several industries as against a single industry?

A. Well, you do the best you can.

Q. Well, Mr. Moore, didn't you state in your affidavit that you were interested in locating several industries in that area?

A. As I recall—I don't remember.

Q. You also stated in your affidavit that there were certain industries which you already had interested in locating in that area?

A. We have two firm applications.

Q. And one of those applications is by whom or by what company?

A. Pacific Fruit is a firm application.

Q. When you speak of a firm application, there is no contractual relationship concerning it?

A. No, sir, but I mean they are perhaps ready to.

Q. Let's put it this way. They are interested in locating a warehouse in that, in the Moses Lake area, isn't that correct?

A. They have indicated they want to locate adjacent to this proposed track. [42]

Q. In Section 13?                   A. Yes, sir.

Q. And the Pacific Fruit and Produce Company

(Testimony of Jerome T. Moore.)

is a distributor of fruits such as bananas, citrus fruits and I think some groceries, is that correct?

A. They handle, yes, produce and groceries.

Q. And vegetables?

A. And vegetables, yes.

Q. And the purpose of such warehouse would be to distribute such products in the Moses Lake area?

A. Well, I think the principal business of the Pacific Fruit in this area would be the accumulation of potatoes and onions for shipment east.

Q. As I remember in your deposition you stated that it was for the purpose of distributing fruits and vegetables in that area, too, isn't that correct, and also groceries?

A. Was that in the affidavit?

Q. In your deposition. Well, isn't that correct?

A. If they handled groceries there it would be for the purpose of distributing them in the, I should say, the Columbia basin.

Q. Wouldn't it be true they would distribute citrus fruits and——

A. Yes, or bananas.

Q. Bananas? [43]

A. Yes, sir.

Q. And consumer goods?

A. Yes, sir.

Q. I believe you have also stated that you have some other company interested in locating in that area?

A. The Interstate Metals are interested.

Q. What is the nature of their——

A. They have steel arch buildings. They distribute steel arch buildings.

(Testimony of Jerome T. Moore.)

Q. So if they would be interested in a distribution warehouse or warehouse distribution—

A. They would sell these warehouses in the Basin as far as—I don't know how far they truck, but—

Q. And I believe in your deposition you stated there was one other company, a wholesale grocery and beer account?

A. We had a firm application from McClintock-Trunkey, but that concern is now dissolved, I understand.

Q. And they are a wholesale grocery?

A. That was groceries and groceries and beer.

Q. Distributing warehouse?           A. Yes.

Q. In order to serve industries of that character within the area outlined in blue, it would of course be necessary to build industry tracks extending from the track shown in blue, is that correct? [44]

A. We'd have—I would expect we'd have a sub-spur for each industry.

Q. In other words, an industry track for each industry off of the track shown in blue?

A. Yes, sir; yes, sir.

Q. Do you contemplate a team track?

A. No, sir.

Q. No team track?           A. No, sir.

Q. And it would be your purpose then to locate other industries of a type which you have described in that same area?

A. Well, I don't know what we can—the future is hard to forecast. I don't know what—

(Testimony of Jerome T. Moore.)

Q. That would be the purpose of building the track and developing that area?

A. Well, it might be a fruit processing company.

Q. Or any other industries that might locate in that area?

A. Yes, if we could find an industry which would develop trackage, I think we'd be interested.

The Court: Sounds like a reasonable proposition.

Q. The McClintock-Trunkey Company distributes beer as well as groceries, is that correct?

A. Yes, sir. [45]

Q. At the time of your 1948 development you proposed to locate industries, I think you have stated, in the yellow area?

A. Along Broadway, yes.

Q. And the purpose of that development was to get some N.P. trackage in that area so that you could locate industries which would be close to the trading center of the City of Moses Lake, isn't that correct?

A. I think we are both interested in both incoming and outbound.

Q. Can you just answer my question?

(Whereupon, the reporter read back the last question.)

A. Yes.

Q. And of course Section 13 itself is close to the trading center or trading area of the City of Moses Lake itself, isn't it?

(Testimony of Jerome T. Moore.)

A. Well, it is up the hill about two miles.

Q. Well, the corner is on the city limits, isn't it?

A. Yes, sir, that is a housing development there.

Q. As a matter of fact, aren't there already some industrial developments?

A. Yes, down the hill.

Q. And in Section 14 which is immediately adjacent to 13? [46]

A. There are some warehouses, yes, west going towards the city.

Q. Yes, that is right. I think I have covered this with you, Mr. Moore, but so the record, there will be no question about it as being in the record, you have no firm contractual arrangements with any firm concerning the location of industries in Section 13 or for lease or for sale of any of that property?

A. No, sir.

Q. You have stated in your affidavit, Mr. Moore, that in the event the Northern Pacific did not build those tracks in 13, that they would lose industries which might locate at some other point, is that correct?

A. Would lose the two industries I have mentioned.

Q. And if those tracks aren't built, those industries or any other industries interested in locating in that general area might locate some other place on the Milwaukee tracks in the City of Moses Lake?

A. Well, Wheeler or——

Q. Can't you answer the question?

Mr. Krier: Just a moment. He is answering it.

(Testimony of Jerome T. Moore.)

(Whereupon, the reporter read back the last question.)

The Court: The question was might those industries locate on the Milwaukee track in the vicinity of Moses Lake. [47] That is the question. Can you answer that by the use of the word "possible"?

The Witness: I don't know.

The Court: Answer it anyway that you think appropriate.

A. I'd say possibly. I don't know where they'd locate.

Q. Wasn't that the import of your affidavit, Mr. Moore, that they would, they would locate——

A. We might lose them, yes.

Q. And they might—of course no one can say just exactly what anybody is going to do in the future, but it is entirely probable that they might locate at some other point in or adjacent to the City of Moses Lake that would be served by the Milwaukee Railroad, isn't that correct?

A. Yes, it is possible.

Mr. Lutterman: I believe that is all the questions I have for him at this time, if the Court please.

The Court: Want to reserve?

Mr. Krier: Yes, please, your Honor.

The Court: Step aside, Mr. Moore, thank you.

Mr. Lutterman: Thank you, Mr. Moore.

(Witness excused.)

Mr. Lutterman (Continuing): Mr. Marshall. [48]

JOSEPH E. MARSHALL

being first duly sworn on oath, was called as a witness on behalf of the Plaintiff and testified as follows:

Direct Examination

By Mr. Lutterman:

The Clerk: State your full name and spell your last name.

The Witness: Joseph E. Marshall, M-a-r-s-h-a-l-l.

Q. You reside where, Mr. Marshall?

A. Seattle, Washington.

Q. By whom are you employed?

A. Milwaukee Railroad.

Q. In what capacity?

A. General Freight Agent.

Q. In what office?

A. In the Western Traffic Manager's office.

Q. At Seattle?

A. At Seattle, Washington.

Q. And as such what are your duties and what parts of the Milwaukee operations do you have charge of?

A. I am in charge of sales and service from the Missouri River west.

Q. And when you say sales and service will you just state what that encompasses, what duties do you perform?

A. That pertains to all traffic duties exclusive of [49] the preparation or establishment of freight rates.

(Testimony of Joseph E. Marshall.)

Q. On tracks of the Milwaukee west of—

A. Mobile, South Dakota.

Q. And of course Moses Lake would be in your territory? A. Yes, sir.

Q. How long have you been employed by the Milwaukee? A. Twenty-seven years.

Q. And in all that time in the Traffic Department? A. Yes, sir.

Q. In work similar to what you are doing now?

A. Yes, sir.

Q. And how long have you been employed in your present capacity? A. Three years.

Q. You are familiar then, are you, generally with the traffic situation on the Milwaukee in the State of Washington? A. Yes.

Q. That comes under your direction and supervision? A. Yes.

Q. In connection with those duties does your office accumulate figures with respect to traffic on the Milwaukee Railroad? A. Yes.

Mr. Lutterman: I think the next number was 5. I [50] have extra copies of these, if the Court please.

The Court: Very well. Anything you have an extra copy of that is handy and convenient, why give it to me because then I can—

Mr. Lutterman: I will furnish the Court with a copy of each of these and you can identify them as it goes along. Mr. Eastman, I will give you copies, too. I have enough here. These are not sorted numerically, but—

(Testimony of Joseph E. Marshall.)

Mr. Eastman: Just two exhibits?

Mr. Lutterman: Four exhibits altogether.

The Court: Are these all going to be separately marked, are they?

Mr. Lutterman: They have been separately marked.

The Court: Fine.

Q. What has been handed you has been marked as Exhibit No. 5, is that correct? A. Correct.

Q. And will you state what that is?

Mr. Eastman: May we have which one that is?

Mr. Lutterman: I was going to get the heading from him and we can identify——

Q. (Continuing): Will you give us the heading of the one which has been marked Exhibit No. 5?

A. "Statement, showing by commodities, number of carload shipments received at and forwarded from Moses Lake, Washington, during the years 1938 to 1947, inclusive." [51]

Mr. Krier: We haven't got that one. We have got two of the others.

Mr. Lutterman: Maybe—does the Court have that one?

The Court: Yes, I have it. Do you mean do I have a copy?

Mr. Lutterman: Yes.

The Court: Yes, that is what I have. I have got two of them. No, that is a different thing.

The Witness: I believe there is an extra one in my bag there.

(Testimony of Joseph E. Marshall.)

Mr. Lutterman: Would you excuse him if he has an extra copy of it, your Honor?

The Court: Yes, of course.

Mr. Eastman: We have two sheets. You said there were four exhibits?

The Court: Well, I must have an extra one of something because I have five up here. Yes, I have this 1948 to 1953 item up above there.

Mr. Lutterman: Here's the one which has been marked Exhibit 5. I will try and supply you as we go along.

Q. Calling your attention to Exhibit 5, Mr. Marshall, will you state in the first place whether or not the figures shown there are figures which are kept in your office and under your [52] supervision? A. Yes, they are.

Q. And this is an accumulation, as the heading states, of figures showing by commodities the number of carload shipments received at and forwarded from Moses Lake, Washington, during the years 1938 to 1947, inclusive? A. Yes.

Q. Now showing you Exhibit 6—retain that for the time being, Mr. Marshall. I think you had better identify all of them—

Mr. Lutterman: If the Court please.

Q. (Continuing): —as we go along.

The Court: Yes, good idea. Let's get all at one time and come back.

Q. (Continuing): Showing you what has been marked Exhibit No. 6, will you state what that is?

(Testimony of Joseph E. Marshall.)

A. Statement showing number of carload shipments forwarded from and received at Moses Lake, Washington, during each month of six-year period, 1948-1953, inclusive.

Mr. Eastman: We don't have a copy of that one.

Mr. Lutterman: Here, I have that.

The Court: I don't have that one either.

Mr. Lutterman: I am sorry, I thought I was— may I see that exhibit? This is a copy for the Court, No. 6.

(Whereupon, a discussion was had off the record concerning exhibits.) [53]

Q. Explain what 6 is?

A. 6 is the statement showing the number of carload shipments forwarded from and received at Moses Lake, Washington, during each month of six-year period, 1948-1953, inclusive.

Mr. Lutterman: Do you have a copy of that?

Mr. Eastman: No, I haven't.

(Whereupon, Mr. Eastman was handed a copy of Exhibit No. 6.)

Mr. Lutterman: Will you hand the witness what has been marked Exhibit 7.

Q. Will you state what that exhibit is?

A. Exhibit 7, statement showing number of carload shipments forwarded from and received at Moses Lake, Washington, during each month of a ten-year period, 1938-1947, inclusive.

Mr. Lutterman: Do you have that?

Mr. Eastman: No.

(Testimony of Joseph E. Marshall.)

Mr. Lutterman: Does your Honor find that one? I don't seem to have an extra copy of that, Mr. Eastman. I will try to locate one for you.

The Court: Would you like to look at my copy now?

Mr. Eastman: No.

Mr. Krier: Unless it would expedite things.

Q. The next exhibit I believe is marked Exhibit No. 8. Will you state what that is? [54]

A. Exhibit 8, statement shown by commodities, number of carload shipments received at and forwarded from Moses Lake, Washington, during the years 1948-1953, inclusive.

Mr. Eastman: I have that.

Mr. Lutterman: You have that.

Q. The last exhibit I think was Exhibit 9?

A. Exhibit 9, freight revenues forwarded and received by years at Moses Lake, Washington.

Mr. Lutterman: You have a copy of that, Mr. Eastman?

Mr. Eastman: Yes.

Mr. Lutterman: Does your Honor have a copy of that?

The Court: Yes, I have all of the five that you have referred to now.

Q. Calling your attention first, Mr. Marshall, to Exhibits No. 5 and 8, those are companion exhibits, are they not?

Mr. Lutterman: I am sorry I got them mixed up in number when I had the Clerk identify them, your Honor.

A. Yes, sir.

(Testimony of Joseph E. Marshall.)

Q. And No. 5 shows the carloadings by commodities in and out for the years 1938 to 1947, inclusive, and No. 8 shows the same information for the period 1948 to 1953, inclusive?

A. Correct.

Q. And then calling your attention to Exhibits 6 and [55] 7, those are likewise companion exhibits, is that correct?

A. Correct.

Q. No. 6 shows the number of carload shipments forwarded from and received at Moses Lake during each month of the six-year period 1948 to 1953?

A. Yes, sir.

Q. And No. 7 shows the same information for the period 1938 to 1947, inclusive?

A. Yes, sir.

Q. That is, they are the same information but for different period of years?

A. Correct.

Q. And of course Exhibit No. 8 is self-explanatory. It shows simply the revenues for the years stated thereon?

A. Yes, sir.

Q. And by "forwarded," what do you mean, Mr. Marshall?

A. That is, that covers all cars loaded at station and shipped from that station.

Q. And "received"?

A. All cars received at that station.

Q. And that includes total revenues, that is—

A. These are gross revenues.

Q. And it is revenue that might accrue to other lines as well as the Milwaukee if the shipment moved over more than one line? [56]

(Testimony of Joseph E. Marshall.)

A. Yes, sir.

Q. In other words, it is total?

A. Gross revenue, gross freight revenue.

Q. And by the way, there are shipments in and out of Moses Lake which are interstate?

A. Yes, sir.

Q. And over this same period of years covered by this Exhibit 9?      A. Yes, sir.

Q. And some of those shipments include a line haul over some one or more connecting lines with the Milwaukee?      A. Yes, sir.

Q. So that those are the gross revenues, not the revenues that accrued to Milwaukee alone?

A. Correct.

Q. Now, calling your attention particularly to the companion Exhibits 5 and 6, it shows, commencing in 1938, a total number of carloads; how many carloads inbound and how many outbound for 1938?

A. Fifty-seven outbound and seventy-three inbound.

Q. Fifty-eight, isn't it, outbound?

A. Fifty-eight outbound.

Q. And for 1939?

A. Twenty-five outbound and forty-nine inbound.

Q. And for '40? [57]

A. Twenty-one outbound and twenty-one inbound.

Q. And for '41? If you will just take them by year and give the totals.

(Testimony of Joseph E. Marshall.)

The Court: Is there any point of reading those? I can see them from the exhibit.

Mr. Lutterman: I just wanted to make——

The Court: Don't let me hamper you or limit you now, but if you want to direct some attention to it, fine, but if it is just a matter of reading what is on the exhibit, I can read that myself, save time.

Q. Mr. Marshall, up to the year 1942——

Mr. Lutterman: Of course the exhibits are self-explanatory, I just wish to make a point if the Court please.

The Court: Don't let me hamper you, but if you want to make a point, fine.

Q. What was the character of the traffic in and out of Moses Lake up to the year 1942?

A. Well, the largest individual carload business was twenty-nine cars of potatoes shipped out of there in '41. The balance of the business outbound was six cars of sheep and the inbound traffic consisted of three cars of lumber and fourteen cars of oil and gas, seven cars of machinery and three cars of hay, plus two cars of miscellaneous freight.

Q. Now, calling your attention——

Mr. Eastman: If the Court please, these exhibits [58] haven't been offered in evidence yet. We do want to offer an objection to them if the witness is being permitted——

The Court: Not having heard anything, I assumed they were going to be——

Mr. Lutterman: May I offer Exhibits 5 to 9 inclusive at this time.

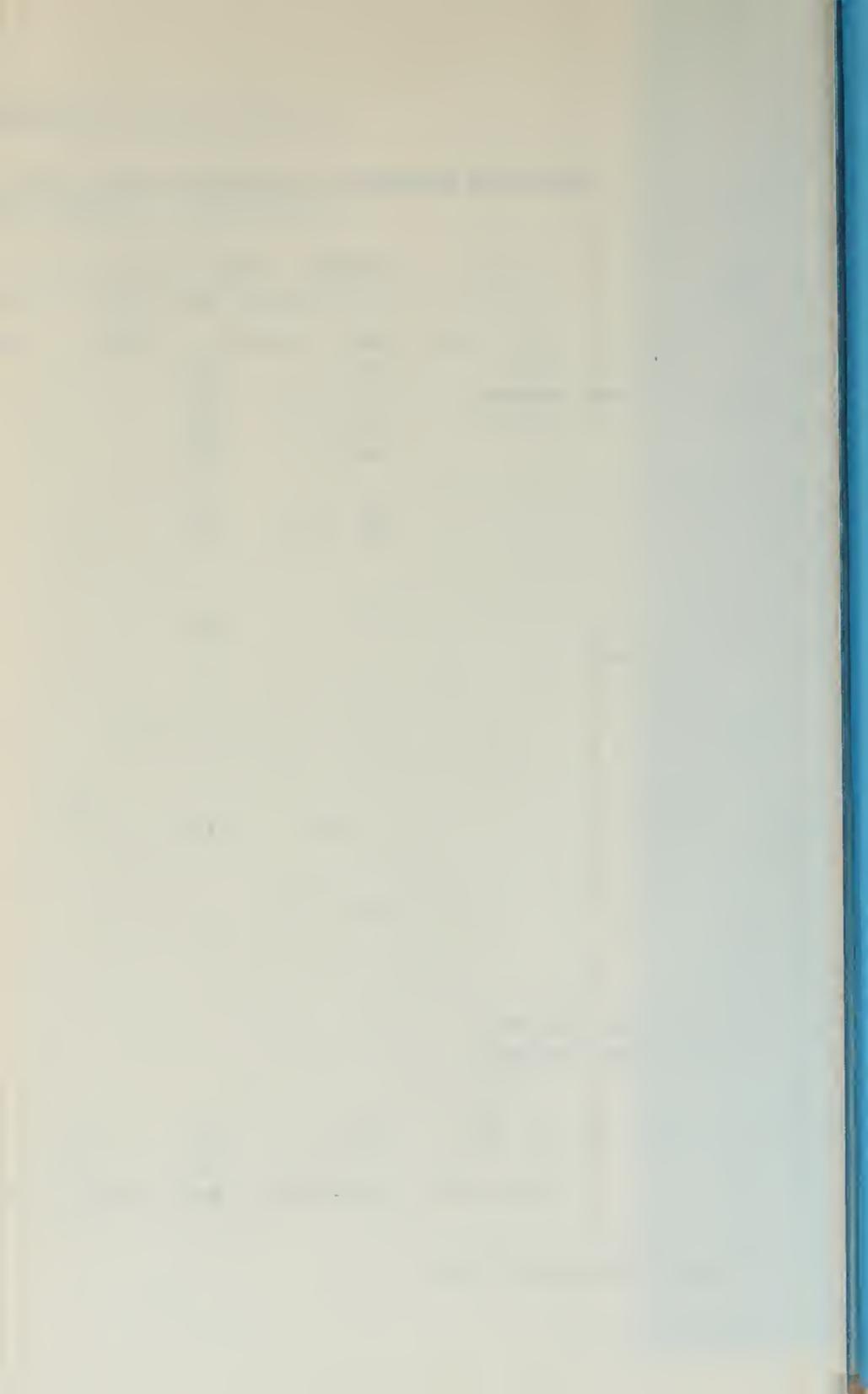


PLAINTIFF'S EXHIBIT No. 5

Statement, Showing by Commodities, Number of Carload Shipments Received at and Forwarded from Moses Lake, Washington, During the Years 1938 to 1947, Inclusive

	1938		1939		1940		1941		1942		1943		1944		1945		1946		1947	
	Out	In	Out	In	Out	In	Out	In	Out	In	Out	In								
Fruit & Vegetables .....	26	2	15	1	21		29		250		346	17	837	33	1,880	88	2,070	124	2,568	107
Coal .....		9		5		4		3		26	178		174		17		18			22
Lumber & Other Forest Products .....		1							183	2	81	1	13		1		22		2	29
Oil & Gas .....		28		15		9		14		10	33	345	5	132	3	19		51		63
Cement .....									318		1,240		4		14		50			81
Fertilizer .....															32					18
Wood .....		8		7		3		7		22		32		30		33		39		30
Machinery .....	1	1							9	19	36	2	4		3	2		19	1	63
Pipe .....						2									3			6		2
Grain Products .....											2		18	3	25		6	13		4
Iron & Steel .....									39		19	6			3			1		4
Agricultural Implements .....													1		1			1		3
Furniture .....											2	16		2			4	2		1
Lime .....										1										3
Sheep .....	31		9	5			6		25		27		7		5	8				1
Cattle .....											4	8	3	5	4		8			
Horses & Mules .....						2					1		1		3		1			
Asphalt & Road Oil .....		23		13				3												
Hay & Straw .....									3		3						18			
Wool .....											1									
Motor Vehicles .....											21	104	57	9						
Ammunition .....											1	9								
Brick .....											9		8				3			
Sand & Gravel .....											1									
Condensed Milk & Canned Goods .....											13	16	12							
Meat & Packing House Products .....											4	5					2			
Eggs .....											3	20	22							
Poultry .....											1	9		3			1			
Miscellaneous .....	1	1	1	3		1		2	53	84	260	30	82	6	10		7	59	3	53
Totals .....	58	73	25	49	21	21	35	29	278	661	537	2,377	1,004	547	1,911	260	2,109	416	2,574	484

Admitted February 23, 1954.

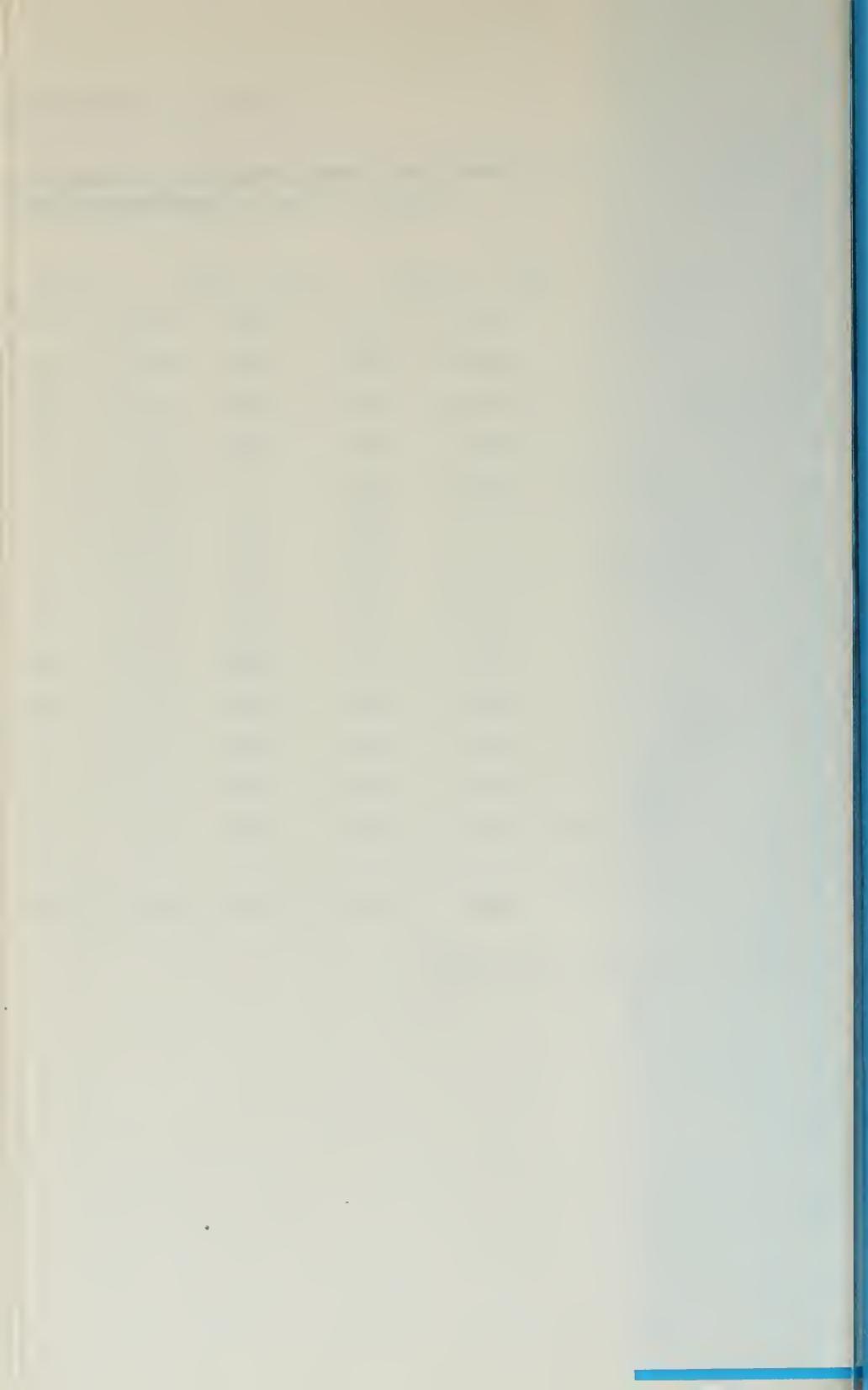


Statement Showing Number of Carload Shipments Forwarded from and Received at Moses Lake, Washington,  
During Each Month of Six-Year Period, 1948-1953, Inclusive

Six-Year  
Average Number  
of Cars by Months

	1948		1949		1950		1951		1952		1953		Six-Year Average Number of Cars by Months	
	Out	In	Out	In	Out	In	Out	In	Out	In	Out	In	Out	In
January .....	198	44	16	100	152	44	18	63	26	74	60	141	78.3	77.7
February .....	68	37	37	95	102	99	63	49	36	56	59	136	60.1	78.7
March .....	17	54	20	122	53	110	39	80	36	85	12	177	29.5	104.7
April .....	16	131	6	106	6	107	7	146	20	136	7	133	10.3	126.5
May .....	4	18	29	42	2	102	4	96	3	88	3	131	7.5	79.5
June .....	0	14	12	33	2	96	1	96	1	74	1	151	2.8	77.3
July .....	27	25	31	75	11	71	18	95	117	73	53	110	42.8	74.8
August .....	758	20	843	23	663	95	339	87	384	66	247	124	539.0	69.2
September .....	634	16	403	46	361	76	418	80	522	99	457	84	465.8	66.8
October .....	53	15	357	38	65	143	363	91	551	136	162	94	258.5	86.2
November .....	15	79	140	95	24	137	83	76	100	90	57	85	69.8	93.7
December .....	19	69	127	48	32	63	37	60	52	134	22	96	48.5	78.3
Total .....	1,809	522	2,021	823	1,473	1,143	1,390	1,019	1,848	1,111	1,140	1,462	—	—

Admitted February 23, 1954.

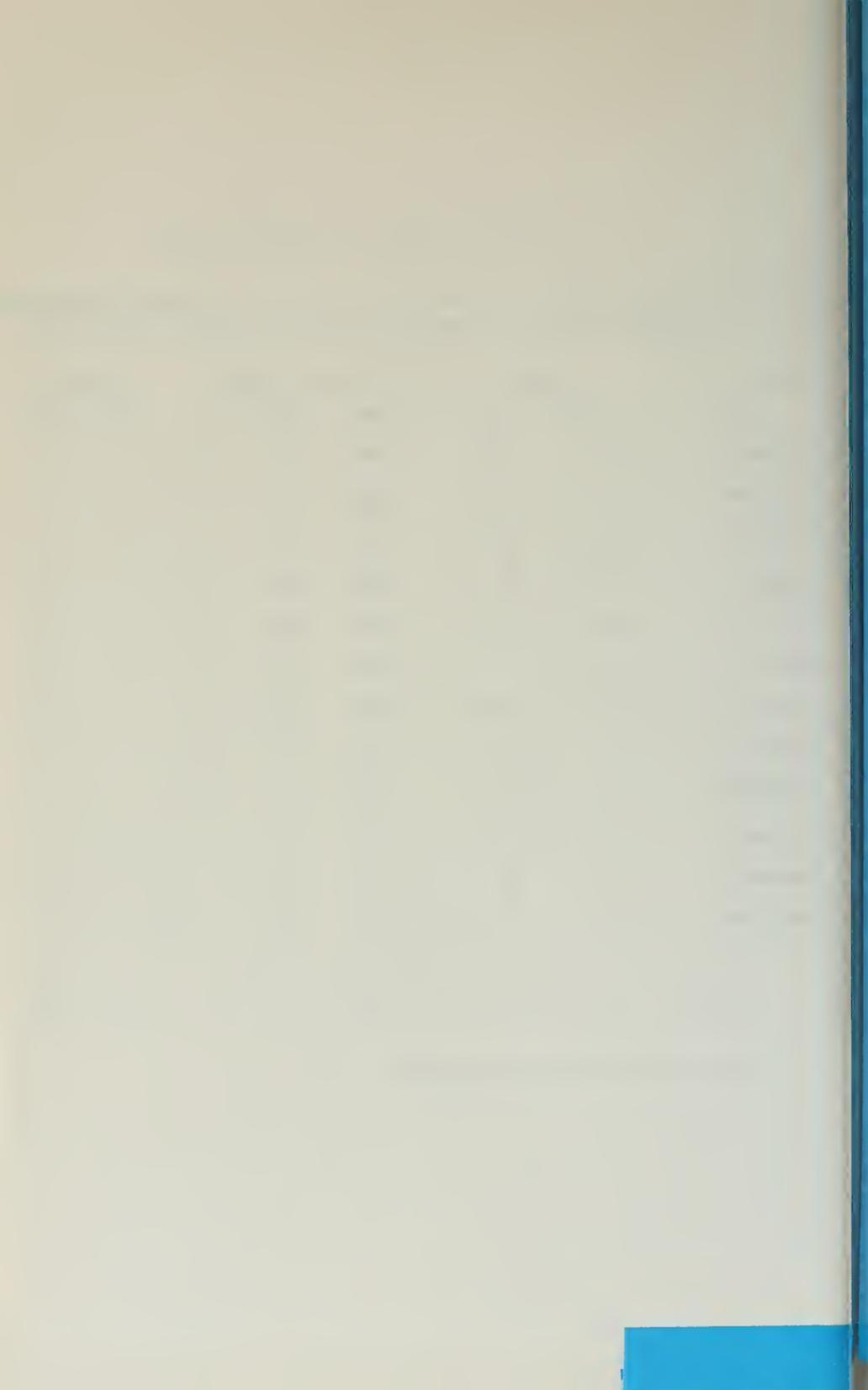


PLAINTIFF'S EXHIBIT No. 7

Statement Showing Number of Carload Shipments Forwarded from and Received at Moses Lake, Washington,  
During Each Month of Ten-Year Period, 1938 to 1947, Inclusive

	1938		1939		1940		1941		1942		1943		1944		1945		1946		1947		Average 1938-1947	
	Out	In	Out	In	Out	In	Out	In	Out	In	Out	In	Out	In								
January .....	4	1	1	0	2	2	2	2	6	4	22	264	106	19	54	21	134	26	113	48	44.4	38.7
February .....	4	5	8	2	1	0	4	1	6	2	42	322	37	7	35	31	34	50	65	54	23.6	47.4
March .....	7	2	5	2	2	1	1	0	7	3	17	241	10	19	24	58	17	49	78	68	16.8	44.3
April .....	7	9	2	1	1	4	1	4	18	1	6	447	18	45	4	18	26	53	65	61	14.8	64.3
May .....	8	4	8	4	1	1	6	4	34	3	29	392	19	68	8	25	2	20	15	39	13.0	56.0
June .....	15	3	0	3	0	2	0	2	7	9	6	155	6	57	0	18	14	31	22	25	7.0	30.5
July .....	0	4	0	16	2	1	0	5	105	1	144	83	363	45	719	18	607	22	881	45	282.1	24.0
August .....	0	10	0	2	5	0	0	1	5	3	57	134	98	46	615	13	855	32	676	14	231.1	25.5
September .....	0	17	1	9	0	3	0	4	8	8	42	164	112	105	167	13	138	34	142	25	61.0	38.2
October .....	8	11	0	4	3	3	11	1	46	101	21	75	99	64	92	10	120	26	221	23	62.1	31.8
November .....	3	5	0	5	3	3	1	4	26	217	106	56	57	41	76	18	88	22	180	31	54.0	40.2
December .....	2	2	0	1	1	1	9	1	10	309	45	44	79	31	117	17	74	51	116	51	45.3	50.8
Total .....	58	73	25	49	21	21	35	29	278	661	537	2,377	1,004	547	1,911	260	2,109	416	2,574	484		

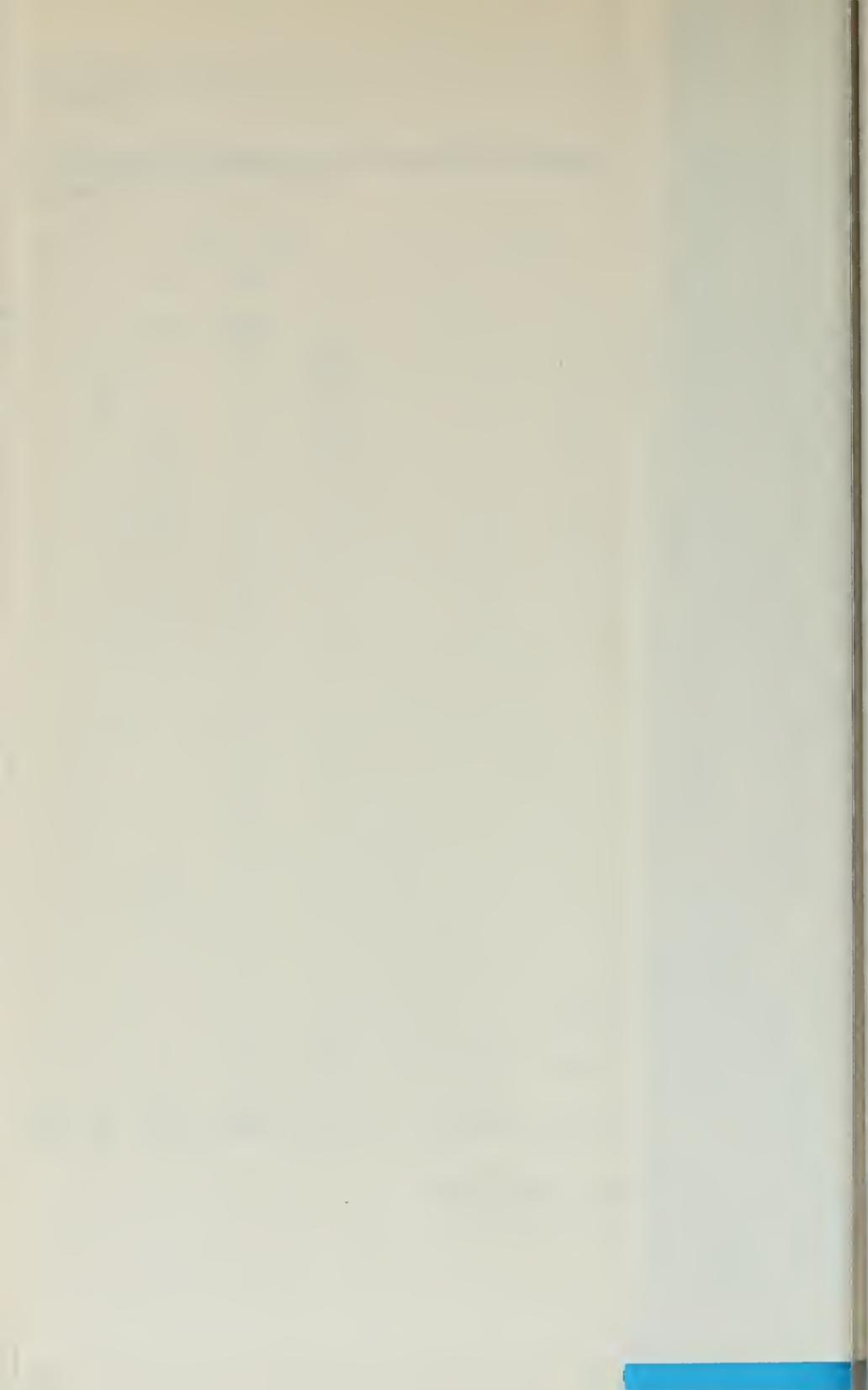
Admitted February 23, 1954.



Statement Showing, by Commodities, Number of Carload Shipments Received at, and Forwarded from Moses Lake, Washington, During the Years 1948-1953, Inclusive

	1948		1949		1950		1951		1952		1953	
	Out	In	Out	In	Out	In	Out	In	Out	In	Out	In
Carloads												
Fruit & Vegts. ....	1,790	213	1,941	82	1,449	93	1,277	40	1,757	110	998	56
Coal .....	—	43	—	285	—	244	—	75	—	4	—	19
Lbr. & Other For. Prod. ....	5	1	13	30	—	124	7	68	1	28	1	17
Oil & Gas .....	—	82	1	127	—	118	—	131	5	271	6	647
Cement .....	—	18	—	51	—	128	—	75	—	100	—	60
Fertilizer .....	—	31	—	34	—	42	—	39	—	82	—	114
Wood .....	—	22	—	13	—	2	—	—	—	—	—	—
Machinery .....	4	14	27	32	3	39	6	47	7	31	7	53
Pipe .....	—	2	—	2	—	10	—	25	—	20	—	28
Grain Products .....	—	—	—	—	5	—	26	—	33	3	65	2
Iron & Steel .....	1	2	—	23	2	8	4	73	6	62	1	23
Agri. Imps. ....	1	3	—	11	—	14	—	11	—	10	—	10
Furniture .....	—	—	—	1	—	1	—	9	—	18	—	10
Lime .....	—	—	—	—	—	—	—	—	—	1	—	3
Sheep .....	—	—	—	11	—	—	—	—	—	—	—	—
Cattle .....	—	—	—	—	—	—	—	6	—	29	—	2
Horses & Mules .....	2	—	2	—	1	—	—	—	—	—	—	—
Asph. & Road Oil .....	—	9	—	5	—	1	—	11	—	15	—	—
Hay & Straw .....	—	—	—	—	1	—	—	—	1	—	—	—
Wool .....	—	—	—	—	—	—	—	—	—	—	—	—
Motor Vehicles .....	—	52	4	40	7	75	12	77	17	59	2	49
Ammunition .....	—	—	—	—	—	4	—	1	—	—	—	—
Brick .....	—	—	—	—	—	—	—	1	—	—	—	—
Sand & Gravel .....	—	—	—	—	—	—	—	—	—	—	—	4
Condensed Milk & Cd. Gds. ....	—	1	—	5	—	17	—	10	—	10	—	11
Meat & PHP .....	—	—	—	—	—	—	—	3	—	—	—	—
Miscellaneous .....	6	19	33	71	5	223	58	317	21	258	50	354
Totals .....	1,809	522	2,021	823	1,473	1,143	1,390	1,019	1,848	1,111	1,140	1,462

Admitted February 23, 1954.



## PLAINTIFF'S EXHIBIT No. 9

Freight Revenues, Forwarded and Received, by Years,  
at Moses Lake, Washington

Year	Forwarded	Received	Total
1938 .....	\$ 12,788	\$ 13,278	\$ 26,066
1939 .....	4,866	10,486	15,372
1940 .....	3,646	3,612	7,258
1941 .....	2,872	3,209	6,081
1942 .....	35,736	181,710	217,446
1943 .....	132,057	706,850	838,907
1944 .....	188,846	184,936	373,782
1945 .....	469,388	53,768	523,156
1946 .....	719,337	100,368	819,705
1947 .....	841,453	177,590	1,019,043
1948 .....	498,766	180,883	679,649
1949 .....	903,634	342,966	1,246,600
1950 .....	610,426	534,674	1,145,100
1951 .....	691,437	569,532	1,260,969
1952 .....	992,510	609,034	1,601,544
1953 .....	700,167	773,398	1,473,565

Admitted February 23, 1954.

(Testimony of Joseph E. Marshall.)

Mr. Eastman: We want the record to show that we object to the introduction of Exhibits No. 5 to 9, inclusive, on the ground and for the reason that they are wholly immaterial to any of the issues in this case.

The Court: No question of the authenticity or the date?

Mr. Eastman: No, we are not questioning——

The Court: Materiality objection?

Mr. Eastman: We are questioning the materiality.

The Court: Well, I will overrule you and hear you further at the time the whole matter is argued. I presume you are going to enlighten me further on that at a later time?

Mr. Eastman: Yes, your Honor.

The Court: Yes.

Q. Calling your attention to the total in and out for the year 1943, it seems to be substantially more than for any of the previous years shown on Exhibit 5. Do you know the reason for that? [59]

A. In 1943 the heavy construction was started for the Larson Air Force base which accounts for the substantial increase in the 1943 received traffic as compared to the received traffic of 1942. The actual construction started late in 1942 but heaviest tonnage involved was in 1943.

Q. And up until that time the traffic had been more or less insignificant, is that correct?

A. Correct.

Q. And for the years prior to 1938, say for the

(Testimony of Joseph E. Marshall.)

ten-year period prior to 1938, do you know what the character of the traffic was? I don't mean the kind, but whether there was much traffic or little or lots to or from Moses Lake, just generally, Mr. Marshall?

A. There was very little traffic in that area at that time and it was not until 1942 that there was any substantial plantings of potatoes and onions in that area.

Q. I notice that commencing in 1942 and for each year thereafter, there was, through the year 1947, there was an increase of outbound loads, was that correct? A. That is correct.

Q. And will you explain or account for that increase?

A. That was due to the expanding acreages being available for the planting of vegetables in that area.

Q. And then looking to Exhibit No. 8 which brings the same information from 1948 up to the end of 1953 it remains [60] more or less constant, that is the outbound loads during that period of time, is that correct?

A. What fluctuations there are in the total outbound shipments is reflected primarily in the decrease in perishables due to bad market years. For instance, in 1950 with a total of fourteen hundred seventy-three outbound cars, you will note there is a decrease of approximately five hundred cars of vegetables as compared to the total of 1949.

Q. The exhibits speak for themselves, but can

(Testimony of Joseph E. Marshall.)

you state, Mr. Marshall, generally whether the traffic is predominantly inbound or outbound?

A. It is primarily outbound, predominantly outbound.

Q. Referring then to the exhibits which have been marked 7 and 6, 6 and 7, this shows the car-load shipments for the same periods from 1948 to 1953 and from 1938 to 1947 by months, is that correct? A. Yes, sir.

Q. And generally, from the information on those exhibits can you state whether or not the predominant traffic is seasonal in character?

A. Yes, sir, it is. The heaviest traffic is usually in August and September when the potatoes move in volume.

Q. Referring now to Exhibit 9 and particularly to the total column on the right-hand side, it shows that up until the year 1942 there was comparatively little revenue received [61] forwarded at the station of Moses Lake, is that correct? A. Yes, sir.

Q. And there is a gradual increase until from about 1947 on there is some fluctuation, but not too great a fluctuation, is that correct?

A. Yes, sir.

Mr. Eastman: If the Court please, I don't like to object, but these questions are extremely leading. It seems to me——

Mr. Lutterman: I think the exhibits speak for themselves. I just want to——

The Court: They are leading, but not especially

(Testimony of Joseph E. Marshall.)

objectionable since the same point is obvious in looking at the exhibits.

Mr. Lutterman: I appreciate that.

Q. Mr. Marshall, in connection with your duties you come in contact with industries or businesses that are interested in locating in various parts of the state that the Milwaukee serves?

A. Yes, sir.

Q. And you are familiar, are you generally, with the City of Moses Lake itself?

A. Yes, sir.

Q. And the development in the past few years in the city itself? [62]

A. Yes, sir.

Q. In the past few years do you know whether or not the Pacific Fruit and Produce Company has been interested in locating in the Moses Lake area?

A. Yes, sir.

Q. And there have been negotiations or at least discussions with representatives of that company with respect to locating in Moses Lake?

A. Yes, sir.

Q. And do you know whether or not, or whether or not they are still interested in locating at Moses Lake?

A. I believe they are.

Q. And so far as you know they have still shown interest in locating a warehouse on property served by the Milwaukee Railroad at Moses Lake?

A. Yes, sir.

Q. Do you know whether or not they have any plans to locate immediately, that is to say within the next twelve months?

(Testimony of Joseph E. Marshall.)

A. No, sir, they do not have any plans.

Q. They have none?

A. No immediate plans that I know of. They do have plans eventually to build. . .

Q. But do you know whether or not they have plans to definitely locate in that area during the year 1954? [63]

A. I know they have no plans to do so in 1954.

Q. But they have plans to locate in that area sometime in the future, is that correct?

A. Yes, sir.

Q. Are you familiar with the firm which has been named here, McClintock-Trunkey, of Spokane? A. Yes, sir.

Q. And what is the nature of that business?

A. They are wholesale grocery company with a beer account in Spokane.

Q. Have they been taken over or succeeded by some new company? A. Yes, sir.

Q. And what is the name of that company?

A. Roundup Grocery Company.

Q. And they distribute their, they are wholesale distributors of groceries? A. Yes, sir.

Q. And they also have distribution, wholesale distribution of a beer?

A. Not the Roundup Grocery Company.

Q. The McClintock-Trunkey? A. Yes.

Q. And what beer do they have distribution of?

A. The Olympia Brewing Company. [64]

Q. Do you know whether or not they have at the

(Testimony of Joseph E. Marshall.)

present time the distribution of that—let's strike that and let me ask you this first.

Did they until recently have the distribution of the Olympia beer including the Moses Lake area?

A. McClintock-Trunkey did.

Q. Yes. And do you know whether they presently have? A. They do not.

Q. And do you know who presently has the distributorship for it?

A. Central Refrigerator Company.

Q. And do you know whether or not they are interested in locating a distribution warehouse in Moses Lake? A. I do.

Q. Are they? A. Yes, sir.

Q. And have they had any dealing looking towards locating such a warehouse on the Milwaukee lines? A. Yes, sir.

Q. In Moses Lake? A. Yes, sir.

Q. Mr. Marshall, in your experience in traffic work in the railroad, you are familiar generally with the manner in which industries ordinarily locate in a trading area? A. Yes, sir. [65]

Q. And generally speaking, industries such as wholesale distributors, let's say, of consumer goods such as groceries, fruit, beer, anything of that nature, ordinarily—

Mr. Eastman: Just a minute. I think that it is very apparent this is going to be another one of those leading questions.

The Court: Sounds like it.

(Testimony of Joseph E. Marshall.)

Mr. Eastman: I think that he has attempted to qualify——

The Court: Sounds like it.

Mr. Eastman: Let the witness testify instead of Mr. Lutterman.

The Court: Careful of the leading.

Q. Where ordinarily, Mr. Marshall, would an industry such as a distributing industry, distributing consumer goods, food, fruit, beer, that desire to serve a particular populated area, where would such an industry ordinarily locate its plant?

A. They would locate it in the central part of a city to reduce their drayage costs so they would serve the entire city.

Q. What ordinarily——

Mr. Krier: May I have that last answer?

(Whereupon, the reporter read back the last answer.) [66]

Mr. Lutterman: That is all the questions I have.

The Court: Cross?

Mr. Eastman: May we have a copy of that Exhibit 7, I believe it is?

#### Cross-Examination

By Mr. Eastman:

Q. Mr. Marshall, referring to your Exhibits 6 to 9, inclusive, which purports to show carload shipments and revenues from Moses Lake, I will ask you to state whether that applies to Moses Lake proper or whether it includes any other state?

(Testimony of Joseph E. Marshall.)

A. Moses Lake proper.

Q. It doesn't include for example any facilities that you might have in the general Columbia Basin territory around Moses Lake including the station of McDonald or any of those other stations?

A. No, sir.

Q. This is confined solely to inbound and out-bound shipments from Moses Lake proper?

A. Yes, sir.

Q. This would not include then, or would it include any carloads handled from or to the U & I Sugar Company plant?

A. That is correct, it would not.

Q. Would not?           A. Include any.

Q. Now that facility, however, which is located between [67] Wheeler and Moses Lake is a part of Moses Lake for tariff purposes, is it not?

A. It is carried in the tariffs as a station, Scalley.

Q. What is the name?           A. S-c-a-l-l-e-y.

Q. But isn't it included for the purpose of shipping and so forth within the switching limits of the City of Moses Lake?

A. No, we wouldn't consider it that.

Q. Well, you wouldn't consider it that, but isn't it a fact that it is included within the switching limits of Moses Lake for tariff purposes?

A. No.

Q. You would say that it is not?

A. Yes, sir.

Q. After the station of Scalley was established,

(Testimony of Joseph E. Marshall.)

wasn't an application made to the North Pacific Coast Freight Bureau for the purpose of including that station within the switching limits of Moses Lake?      A. I didn't see that.

Q. You don't know?

A. I don't know whether it was or not.

Q. Well now, if a shipment was billed to U & I Sugar Company at Moses Lake, where would it be delivered?

A. It would be delivered to them at Scalley. [68]

Q. Do you know whether or not any shipments are billed from or to the sugar refinery in that manner?      A. Yes, sir.

Q. They are?      A. Yes, sir.

Mr. Lutterman: In what manner?

Mr. Eastman: Just a moment, please.

Q. Billed to Moses Lake, are they not?

A. Some of the inbound cars show the U & I Sugar Company, Moses Lake with Scalley in parentheses. Some show Scalley and Moses Lake in parentheses, but the cars are automatically taken out to Scalley by the same switch crew.

Q. But——

The Court: By the same switch crew?

The Witness: Same road crew, beg pardon.

Mr. Lutterman: If the Court please, I would like to object to cross-examination along this line on the ground that I don't see the materiality of it.

The Court: Well I can't yet, but I must assume that there is some purpose in it so——

Mr. Eastman: I believe there is, your Honor.

(Testimony of Joseph E. Marshall.)

The Court: Go ahead.

Q. (Continuing): Well now, do you have any agent at Scalley? A. No, sir. [69]

Q. Where are the billings made with respect to the shipments moving from and to the U & I Sugar Company? A. Moses Lake.

Q. And when you purport to show—strike that.

Then there would be included in the agent's accounts at Moses Lake the revenues from shipments inbound and outbound from the Utah-Idaho Sugar Refinery? A. In his totals, yes, sir.

Q. Yes. For the purpose of showing station revenues, why did you exclude those revenues which come from the handling of shipments from and to the Sugar Refinery?

A. Because it is outside of the limits of Moses Lake.

Q. That is you mean it is outside of the corporate limits?

A. Corporate limits of Moses Lake.

Q. But they are revenues which flow through your station at Moses Lake?

A. Yes, sir, he handles that billing.

Q. The billings are all handled through the Moses Lake station? A. Yes, sir.

Q. The Bills of Lading? A. Yes, sir.

Q. They are signed by your Moses Lake agent?

A. Yes, sir. [70]

Q. How far is the Sugar Refinery located from the station at Moses Lake?

A. By rail roughly about eight and one-half miles.

(Testimony of Joseph E. Marshall.)

Q. About eight and one-half miles. Where is it with respect to the station of McDonald?

A. It is directly—it is northwest.

Q. And approximately how far from that station to the Sugar Refinery proper?

A. It would be strictly an estimation, two and one-half miles.

Q. That is your judgment of the distance?

A. Yes, sir.

The Court: At McDonald, was that?

The Witness: McDonald, yes.

Q. Are you talking about to the plant proper or to the extent of the line owned by the Milwaukee that reaches that plant?

A. To the extent that reaches the plant.

Q. You would say it is two and one-half miles from the connection of the Milwaukee up to the plant in Section 20?

A. Yes, sir.

Q. That is your best judgment?

A. Yes, sir.

Q. Now, that is a spur that takes off near the station McDonald, does it not, that is closer to McDonald than it does [71] to Moses Lake?

A. Yes, sir.

Q. Is that an agency station, McDonald?

A. No, sir.

Q. Are there any facilities of any kind at the station of McDonald?

A. How do you mean, facilities?

Q. For the handling of shipments?

A. No, sir.

(Testimony of Joseph E. Marshall.)

Q. From and to that area? A. No, sir.

Q. Are there any warehouses of any kind on the Milwaukee in the vicinity of McDonald or—

A. In the vicinity of McDonald?

Q. Yes. A. Could you define "vicinity"?

Q. Well, within two or three miles?

A. Well, Seiler is our next station.

Q. How far is that? A. About three miles.

Q. About three miles. And where is that, how far is that from Moses Lake?

A. Well, that is; I'd say that is six miles, five and one-half to six miles.

Q. Is Seiler an agency station? [72]

A. No, sir.

Q. And for the purpose of billing, revenue and so forth, what station handles that?

A. Moses Lake.

Q. Are there included in the figures which you have here any revenue from shipments that pass through the or handled at or near the Seiler station?

A. No, sir.

Q. Is there a warehouse or, of any kind, located at the station of Seiler?

A. Yes, there is one plant there.

Q. And what is that?

A. That is the potato and onion loading shed.

Q. Do you have information as to the volume of potato and onion shipments that are handled through the station at Seiler? A. Yes, sir.

Q. Can you tell us approximately what they are?

Mr. Lutterman: If the Court please, I have sat

(Testimony of Joseph E. Marshall.)

here and listened to this without objecting, but it seems to me we are getting far afield now. We are talking about a station which is a separate station.

The Court: I can't tell at this stage so as to intelligently rule. I must assume that counsel are confining themselves to a matter that is material here until I find [73] out to the contrary. I want you to make a full showing, both of you. But this is a matter I can't rule on at this time until I have heard about it. Go ahead.

Q. (Continuing): Can you tell us the approximate inbound and outbound shipments from that potato warehouse at Seiler?      A. Total?

Q. Yes.

A. About three hundred fifty cars a year.

Q. And those carloads and revenues therefrom are not included in the statements which you have shown as representing revenues of your station at Moses Lake?      A. Right.

Q. Now, are there any other facilities at non-agency stations within six or seven miles of Moses Lake in connection with which there are carload shipments inbound or outbound in connection with their revenues, billing of which is handled at Moses Lake station that are not included in these figures?

A. Yes, sir.

Q. Will you name them?      A. Goodrich.

Q. And indicate if you can the approximate carloads and character of the tonnage moved from and to those facilities.

(Testimony of Joseph E. Marshall.)

A. Goodrich, Washington, approximately four miles from Moses Lake.

Q. Which way from Moses Lake? [74]

A. South by east.

Q. Would that be toward McDonald?

A. Toward McDonald.

Q. Would it be between McDonald and Moses Lake? A. Yes, sir.

Q. And what facility is located there?

A. Potato and onion house.

Q. What is the approximate annual volume of potatoes and onions that move out of that facility?

Mr. Lutterman: I assume it is understood my objection goes to this whole line of testimony?

The Court: That is right; go ahead.

A. About a hundred cars a year.

Q. About a hundred cars a year. How recently has that facility been established there?

A. That facility has been there three years that I know of.

Q. And the one at Seiler, how recently was that established? A. One year.

The Court: How do you spell Seiler?

The Witness: S-e-i-l-e-r, sir, S-e-i-l-e-r.

The Court: Thank you.

Q. Were the operators of either of those facilities at any time located in Moses Lake area, in Moses Lake? [75]

A. McDonald, no; Seiler, no; the operator of the plant at Goodrich operated in Moses Lake last year, that is 1952.

(Testimony of Joseph E. Marshall.)

Q. In 1952 he was in Moses Lake?

A. Yes, sir.

Q. On the line of the Milwaukee?

A. Yes, sir.

Q. And in 1952 did that operator make shipments of potatoes and onions out of Moses Lake proper? A. In 1952 he was at Goodrich.

Q. I beg pardon?

A. I said he was in Goodrich in 1952.

Q. Oh, he moved there in 1952?

A. Yes, sir.

Q. In 1951 then, the last year he was in Moses Lake?

A. Last year he didn't operate in that country.

Q. Well, the last year that he did operate?

A. Was 1952, well 1953, but in 1953—I wish to make a correction. The party that operated at Goodrich in 1953 transacted his business in Moses Lake in 1952.

Q. In 1952. Did he ship onions and potatoes out of Moses Lake in 1952? A. Yes.

Q. What facility did he utilize in Moses Lake at that time? A. His own warehouse. [76]

Q. His own warehouse? A. Yes, sir.

Q. And can you tell me the approximate volume of shipments that he handled during 1952 out of Moses Lake proper?

A. Oh, about a hundred twenty-five cars.

Q. Approximately the same volume that he handles? A. Yes.

(Testimony of Joseph E. Marshall.)

Q. So that those figures would be reflected in your 1952 figures on your exhibits?

A. Yes, sir.

Q. But his shipments in 1953 at his new location would not be shown? A. That is correct.

Q. Now, are there any others that operated in Moses Lake located on the Milwaukee in the years shown on your exhibit?

A. No, sir, no others.

Q. That subsequently moved to outlying points?

A. No others.

Q. When did you first learn that the Pacific Fruit and Produce Company was interested in locating in the Columbia River Basin territory?

A. I heard through the benefit of our Real Estate Department file. I believe that was April, 1953.

Q. In April of 1953? A. Yes. [77]

Q. And that was the first time that you knew that they were interested in locating in that area?

A. Yes.

Q. Did you talk to anyone yourself?

A. Yes, sir.

Q. Of Pacific Fruit and Produce Company?

A. Yes.

Q. When with respect to that date?

A. Well, I didn't handle it until, didn't get into it until November 6th.

Q. November 6th of 1953? A. Of 1953.

Q. Now, did you attempt to get the Pacific

(Testimony of Joseph E. Marshall.)

Fruit and Produce Company to sign a lease upon certain property in Moses Lake?

A. No, sir. I talked with them seeking information as to whether they were going to do anything in the Moses Lake country in 1953 or 1954. In fact, my direct question was whether they proposed to put up any structures for the 1954 crop and the answer was no.

Q. That was in November?

A. November 6th.

Q. November 6th. Now, what was your understanding as to the character of the operation that they proposed in this area? [78]

A. The biggest business would be the assembling and packaging and shipping of potatoes and onions.

Q. Their operation would primarily be a potato and onion shipment?

A. Plus the handling of produce from outside the state and perhaps augmenting that with a grocery line later on.

Q. Well, it was not your understanding, was it, when you talked to these people that they intended to limit their operation, or to restrict it to the distribution or the jobbing and distribution of bananas, citrus fruits and commodities of that type that they would ship inbound and distribute in that immediate area? A. No, sir.

Q. It was your understanding that the commodity would be primarily a vegetable, processing and storage facilities in which they would handle principally potatoes and onions?

(Testimony of Joseph E. Marshall.)

A. I didn't correctly hear your first question, but the answer is, it was for the entire operation eventually.

Q. Yes, but initially and primarily it was for handling of potatoes and onions? A. Yes.

Q. Now, you have found, have you not, Mr. Marshall, in your operation in this Columbia Basin territory and in the area along the Connell Northern and the Milwaukee, Wheeler, Moses Lake area, that with the development of agriculture [79] the production has substantially increased, has it not?

A. Generally, yes.

Q. And there have been established throughout that territory generally a number of facilities for the handling of that production? A. Yes, sir.

Q. And in your opinion as a man who is familiar with the development of traffic, do you think that, that as the irrigation development proceeds that production and subsequently transportation will generally gradually increase in that territory?

A. I anticipate further increases. However, that judgment is tempered with the fact that additional acres will be placed into sugar beet production which in itself will not produce as many cars of freight as if those acres had been planted in onions, peas, beans, potatoes, etc.

Q. But there is only a very small proportion of the total acreage at the present time that is under irrigation as compared with that that will be when the project is completed?

A. That is correct.

(Testimony of Joseph E. Marshall.)

Q. And you have found, have you not, since 1952 when water first came on the land that the production has increased substantially?

A. Yes, sir. [80]

Q. Was this contact that you had with Pacific Fruit and Produce in November, 1953, the only contact that you had with them?

A. In that year?

Q. Personally? A. In that year, yes, sir.

Q. Well, had you had any in this year?

A. Yes, sir.

Q. How recently? A. February 16th.

Q. With whom of the Pacific Fruit and Produce Company did you have your contact in November, 1953? A. Arthur Nowlin.

Q. Arthur Nowlin. Do you know who he is?

A. Yes, he is Assistant to the Executive Vice President.

Q. Is that assistant to Mr. Russell Miller?

A. Right.

Q. Where did you talk to him?

A. I talked to him on the telephone.

Q. You assumed you were talking to Mr. Nowlin? A. Yes, sir.

Q. Who—was he the only one that you talked to? A. Yes, sir.

Q. Was that in Seattle? A. Yes, sir. [81]

Q. Whom did you next talk to and when?

A. Same gentleman February 16th.

Q. February 16th? A. Yes.

(Testimony of Joseph E. Marshall.)

Q. And what was the nature of your conversation and purpose of your inquiry at that time?

A. I asked him if there had been any changes in their plans insofar as establishing a house at the Columbia Basin, Moses Lake in particular.

Q. What prompted that inquiry?

A. To keep up the file.

Q. You just called him as a matter of course?

A. That is right.

Q. In November and in February?

A. Yes.

Q. And that was the substance of your conversation? A. Yes, sir.

Q. And you had no contact with anyone else representing Pacific Fruit and Produce Company?

A. No, sir.

Mr. Eastman: I think that is all.

### Redirect Examination

By Mr. Lutterman:

Q. Mr. Marshall, what did Mr. Nowlin tell you with [82] respect to their intentions in this last conversation you had with him?

A. He said they were not prepared to go ahead with construction of a house in the Columbia Basin in Moses Lake at the present time. There might be a possibility for the year 1955.

Q. Did he state whether or not they might still be interested in locating on the Milwaukee—

Mr. Eastman: Just a minute. I object to that as

(Testimony of Joseph E. Marshall.)

improper redirect examination and certainly leading.

Mr. Lutterman: You have opened the whole thing up.

Mr. Eastman: I know, but you can ask him what the conversation was, but he certainly doesn't need to have it suggested to him what he should answer.

The Court: I doubt very much if this gentleman would be influenced by it. My impression of him is such—however, it was objectionable on that ground. You should avoid leading. Do you have that question in mind?

The Witness: Could I have the question?

The Court: What if anything did he say concerning the plans of Pacific Fruit with respect of locating there as related to the Milwaukee line? Little hard to put without leading, when you come to put it.

A. Frankly, I didn't bring in the Milwaukee Railroad. He knew who I was with, knew what we were talking about, so [83] the question about establishing on our land was never brought up.

Q. Now, Mr. Marshall, Mr. Eastman has brought in the word non-agency station. I don't know how familiar his Honor may be with that.

The branch line which serves Moses Lake extends from the Milwaukee main line at Warden, is that correct? A. That is correct.

Q. Do you know approximately the mileage involved? A. No, I don't.

(Testimony of Joseph E. Marshall.)

Mr. Lutterman: Well, I will bring that out later if the Court please.

Q. However, there are——

Mr. Krier: Pardon me just a moment, if the Court please. There is a map in here that we have stipulated to—I think you offered it, did you not—which shows all of that.

Mr. Lutterman: Well, I don't know whether it has actually been offered. I think you and I stipulated on it, Mr. Krier, at the time of the depositions, but I think——

The Court: Well, if it is somewhere here let's not go into it now. What you want to bring out now is what an agent station is?

Mr. Lutterman: Yes.

The Court: Let's get on with that. I am keeping you [84] to conclude with Mr. Marshall. We will wind up with him, so let's get to that.

Q. (Continuing): Are there some stations between the station at Warden and the station at Moses Lake on that branch line? A. No, sir.

Q. I mean stations as such. I am not speaking of agency stations, such as Wheeler that you have testified to?

Mr. Eastman: Wheeler is on the Northern Pacific.

Q. (Continuing): Seiler, McDonald, Tiffis?

A. No, sir.

Q. Are there any agency—in the first place, what is meant by an agency station?

A. An agency station is a station where a rail-

(Testimony of Joseph E. Marshall.)

road maintains an agent for the handling of billing, freight shipments, business, messages.

Q. Ordinarily there are stations on the line which do not have such facilities or have such agency, is that correct?      A. That is correct.

Q. And the work of such other non-agency stations is performed by the nearest agency station, is that correct?      A. Correct.

Q. For instance, if an agency station is closed, what is done with the work for that station? [85]

A. Well, it is at the discretion of the Superintendent. The work is handled at the next station.

Q. And by an agency station you mean that is a station where they have personnel for handling?

A. That is correct.

Q. And will you state whether or not such open station or agency station might handle the work for other stations which don't have that facility?

A. They do.

Q. Now, I think you said that the shipments to or from the Larson Air Force Base are included in your exhibit?      A. Yes, sir.

Q. The shipments, however, from the stations of McDonald, Seiler and Goodrich are not included?

A. That is correct.

Q. And likewise, the shipments to or from the station of Scalley?      A. Correct.

Q. And will you state whether or not those points are separate stations on the railroads in the sense of their being a railroad station?

(Testimony of Joseph E. Marshall.)

A. Well, they are separate stations without agents.

Q. They are non-agency stations?

A. That is correct.

Q. I brought up about the billings to be made. That [86] is true of any non-agency station, the billing for that station is done at the closest agency station, is that correct? A. Correct, yes.

Q. And likewise when you speak of the revenues, the non-agency revenues are included in the revenues received at the closest agency station?

A. Yes, sir.

Q. And will you state the reason why the Air Force revenues are included in the Moses Lake revenue shown in your exhibit?

A. They are not included—they are included in the Moses Lake figures due to the fact that the Larson Air Force Base does not show as a station in the official guide or in the tariff. It is for that reason the air tonnage was included in the Moses Lake tonnage.

Q. And although the shipments, calling your attention to Exhibit 4, shown here is a rail line shown as United States Government Railroad, although the shipments actually are—the Air Force Base is beyond the limits of this map and served by this railroad, is that correct? A. Yes, sir.

Mr. Lutterman: I think that is all.

Mr. Eastman: Just one question.

The Court: All right. [87]

(Testimony of Joseph E. Marshall.)

Recross-Examination

By Mr. Eastman:

Q. How far is Larson Air Base from Moses Lake station?      A. Oh, I'd say five miles.

Q. About five miles. Thank you.

Mr. Lutterman: That is all, Mr. Marshall.

The Court: That is all, Mr. Marshall. That famous last question finally got there.

I think we will suspend now, but before doing so I'd like to check a little bit with you about the time situation. About how long do you think it is going to take to get the evidence and argue the entire matter? Is there any thought in your mind that we are going to present the evidence and then you are going to argue it at some later time or present briefs or anything like that? Or do you desire to have the whole matter disposed of now?

The reason I am asking, maybe I should back up a little bit and explain why I am asking. I am going to be leaving here a week from today and will be away for about a month. I understood it was your desire that this matter was of considerable public importance as well as to the litigants and therefore I am prepared to do whatever I may be able to do in the way of disposing of this case before I leave.

Now, if you are going to want time to prepare briefs [88] and that sort of thing, I can't help you.

I can give you the greater part of the balance of this week to dispose of it, if that is enough time.

With that background what are your estimates on the amount of time?

Mr. Lutterman: If the Court please, I have only three additional witnesses, one of which certainly shouldn't be very long, and none of which should be too long. I would assume certainly I would finish by noon tomorrow. I would expect so.

The Court: How would that put you gentlemen?

Mr. Krier: I would say if we finish, if plaintiff finishes at noon tomorrow we would, we would finish by Thursday evening.

The Court: With your evidence?

Mr. Krier: Yes.

The Court: It would take a day and a half for evidence?

Mr. Krier: Well, I think it would take us a day and a half to put on our case.

The Court: Are you including in that argument and so on?

Mr. Krier: No.

The Court: You are just talking about putting in evidence? [89]

Mr. Krier: Just the evidence.

Mr. Eastman: It might be concluded in a day, your Honor, but it is a little difficult to——

The Court: Does anybody got any thought in your mind that the judge ought to see this area over there? That isn't necessary, is it?

Mr. Krier: I don't think so.

Mr. Lutterman: I think, if the Court please, we

have one aerial photograph that has been identified at the request of——

The Court: So there is no point in your—you are not going to ask me, either one of you, to go over? I will do so if you think it necessary or desirable.

Mr. Krier: We are not going to ask.

Mr. Lutterman: If your Honor doesn't feel that he is sufficiently clear after the exhibits including the photograph, we'd certainly be glad to have him go.

The Court: Well then, am I correct in what I said that you do desire this case decided this week if possible?

Mr. Krier: Yes, your Honor.

Mr. Eastman: We would like to present oral argument, your Honor, at the conclusion of the case.

The Court: And right at the conclusion of the evidence you are prepared to go right forward with the argument, are you? Are you also prepared, Mr. Lutterman? [90]

Mr. Lutterman: Yes, your Honor.

The Court: Then I think we will—I have some other matters here that I will, if necessary, set aside in order that you may conclude it.

Mr. Eastman: I would say that with oral argument and everything we certainly should be able to complete the case this week very easily.

The Court: Very well. Would it be convenient for you to be here at nine-thirty in the morning, or desirable?

Mr. Krier: We can do it.

The Court: I will leave it up to you. It will given an extra half hour in the morning and if it is necessary we will go a little bit longer tomorrow to get the evidence all in, and then we'd have a little more time for the argument.

Mr. Eastman: I think maybe that would be a good suggestion if the Court is willing.

The Court: I don't want to inconvenience you within reason. All right?

Mr. Lutterman: Satisfactory.

The Court: Fine, we will convene tomorrow at nine-thirty then.

(Whereupon, Court was recessed at four-forty-three o'clock p.m.) [91]

February 24, 1954

Mr. Eastman: If the Court please, at the conclusion yesterday your Honor made the inquiry as to whether or not we thought it might be desirable for the Court to view the territory. At that time having in mind that we have maps and pictures and so forth through which we expect to develop the picture, we nevertheless concluded, and although it may result in some delay, we think it would be very helpful if the Court could view these, this territory, and in view of the Court's suggestion, we would request that it be arranged at some time that the view be taken.

I make that announcement now in view of what your Honor said about your calendar and other commitments that you have.

The Court: We won't take any action on it, Mr. Eastman, at this time. We will just keep it in mind that you do have that thought and we will see how the evidence shapes up and what the status of the matter is and then I will decide later on whether I should go or shouldn't go, and in the meantime I will let Mr. Lutterman give me his views at that time.

Mr. Eastman: Thank you.

The Court: I think we have a couple of *ex parte* matters. [94]

(Whereupon, *ex parte* matters were considered and then the following proceedings were had, to wit:)

Mr. Lutterman: May it please the Court, first I should like to file a supplemental memorandum which I have simply labeled as part three and should logically be attached to the memorandum I have previously submitted.

The Court: Yes, that is for the original. Staple that just to the original memorandum designated "Plaintiff's Trial Brief."

The Clerk: Yes, your Honor.

The Court: And give me your stapler machine when you are through. I will staple it to the copy I have as well. Go ahead, Mr. Lutterman.

Mr. Lutterman: Mr. Derrig. [95]

J. T. DERRIG

having been previously sworn on oath is recalled as an adverse witness on behalf of the Plaintiff and testified as follows:

Further Direct Examination

By Mr. Lutterman:

Q. Mr. Derrig, during your testimony yesterday I inquired as to whether or not you had any drawings of any nature showing the track leading off of the track shown in blue, Section 13, as shown on Exhibit No. 4, and if so I asked you to bring them this morning. Did you bring any such plans?

A. I sent a man to Seattle last night to get the prints and he will be here very shortly.

Q. I see. You don't have them yet in your possession? A. How is that?

Q. You personally don't have them right now? I say, you don't personally have them right now?

A. Not that map.

Q. Calling your attention to the track shown in blue on Exhibit No. 4, that track is approximately four miles in length, is that correct? I don't know if you can see the color. May he step to the map?

The Court: Certainly, of course.

Q. (Continuing): This track shown in blue which is [96] your present proposed track?

A. Yes, sir.

Q. Extending into Section 13?

A. Yes.

Q. That is approximately four miles in length?

(Testimony of J. T. Derrig.)

A. Three and nine-tenths miles, yes.

Q. Yes, and the track which is shown in red and labeled on Exhibit No. 4 as the 1948 proposed N.P. track is approximately four miles, is that correct?

A. Slightly over four miles, yes.

Mr. Lutterman: I assume, Mr. Krier, that when the map is available you will notify me?

Mr. Krier: Oh, yes, sure.

Mr. Eastman: I might say, Mr. Lutterman, Mr. Derrig and the rest of us did not go to Seattle last night. We stayed in Tacoma and Mr. Derrig sent over for the map that he referred to in his testimony and it is on its way over here now.

Mr. Lutterman: Thank you.

The Court: All for now, Mr. Derrig.

(Witness excused.) [97]

#### ALFRED L. SEDGWICK

being first duly sworn on oath, was called as a witness on behalf of the Plaintiff and testified as follows:

#### Direct Examination

By Mr. Lutterman:

The Clerk: State your full name and spell your last name.

The Witness: Alfred L. Sedgwick, S-e-d-g-w-i-c-k.

Q. Mr. Sedgwick, you reside in Seattle?

A. Yes, sir.

(Testimony of Alfred L. Sedgwick.)

Q. By whom are you employed at the present time?      A. By the Milwaukee Railroad.

Q. In what capacity?

A. Western Industrial Commissioner.

Q. For what period of time have you held that position?      A. Under that title?

Q. No, that position?

A. About two years, the work substantially for thirty years.

Q. That is you held the same position but under a different title?      A. That is correct, yes.

Q. For the past thirty years. And what is the nature of your work?

A. It consists of right-of-way, real estate [98] and industrial development work.

Q. On what portions of the Milwaukee?

A. On the Milwaukee lines west of the Missouri River at Mobridge, South Dakota.

Q. Where are your headquarters, Mr. Sedgwick?

A. Headquarters at Seattle.

Q. And they have been at Seattle during approximately the last thirty years in that capacity?

A. Yes, sir.

Q. And I believe there was a short period when you were in the service. What years were those, Mr. Sedgwick?

A. With the exception of about three years, yes, sir.

Q. What years were those?

A. The last three months of 1942, all of '43, '44 and '45 I was absent.

(Testimony of Alfred L. Sedgwick.)

Q. You are then generally familiar with the Milwaukee Railroad on its line west of the Missouri River?      A. Yes.

Q. And the industrial property served by the Milwaukee Railroad in that territory?

A. Yes, sir.

Q. Are you personally familiar with the City of Moses Lake in Washington and the territory tributary thereto?      A. Yes.

Q. And over what period of time have you been familiar with [99] the community of Moses Lake and that area?

A. Well, since 1922, approximately thirty years.

Q. And could you briefly describe the growth and development of the community of Moses Lake and the area adjacent thereto?

A. During the early twenties there was a very small population in that vicinity and there was little organized irrigation in the vicinity of the Lake. There were, I believe, two apple warehouses and two concerns engaged in shipping fish from the Lake, and there were farms bordering the Lake with a small population in the town.

Q. By the way, historically has the town, that is the town itself, always been known as Moses Lake or did it have another name?

A. No, sir. It was originally known as Neppel and later changed to Moses Lake, although the Lake itself was always known as Moses Lake. The first organized irrigation in that area started, I believe, in 1929 with the completion of a dam at the lower

(Testimony of Alfred L. Sedgwick.)

end of the lake in 1930. An irrigation district was formed called the Moses Lake Irrigation District which embraced approximately thirteen thousand acres of land of which between eleven and twelve thousand was irrigable and has been irrigated. That irrigation district is still in existence and the land still in irrigated use.

The Bureau of Census gave no record of the population [100] of either Neppel or Moses Lake for the years 1920 and 1930, but showed for 1940 a population of three hundred twenty-six, and for the year 1950 a population of **twenty-six hundred seventy-nine**. There has been, of course, a very rapid growth since according to the local newspaper editor and Chamber of Commerce. Has brought the population within the city limits between five and six thousand, close to the latter figure. That population increase became most pronounced in the beginning in the year 1942 when the Government purchased land for the present Larson Air Base and a track was located and extended to that area.

Q. When did the Columbia Basin waters as such, that is of the Columbia Basin Irrigation District first become available in that immediate area?

A. I believe 1951 was the test year for water in that, in the irrigation block lying east and north of Moses Lake, with 1952 the first year for regular water application to the land.

Q. And prior thereto was there any production through irrigation by reason of water furnished by the Moses Lake Irrigation District?

(Testimony of Alfred L. Sedgwick.)

A. Yes, sir, there was a very heavy production from the Moses Lake Irrigation District lands. As a matter of fact, I don't believe the outbound shipments of produce made in 1947 have been exceeded in any year since. [101]

Q. And at the present time is the area in the immediate vicinity of the town, the City of Moses Lake, all of the area has water available to it by virtue of the Columbia Basin project?

A. Not completely surrounding the town, no, sir. There are areas of land particularly to the west and south that are not yet watered and may never be because of their unsuitability because of topography and/or soil conditions.

Q. What I meant, Mr. Sedgwick, is that lands which are primarily suitable for that purpose, water has become available to them?

A. Yes, sir, that is true.

Q. What if any part did the Milwaukee play in the development of the production there. let's say commencing before 1952?

A. The Milwaukee has at all times since building its line furnished rail service there and has built spur tracks to industries requiring trackage and has from time to time acquired and leased or sold to industries lands suitable for industrial sites. That work is continuing and is planned, of course, for the future and to meet the demands as it occurs.

Mr. Lutterman: Would you show him the picture which has been marked Exhibit, I think it would be 10.

(Testimony of Alfred L. Sedgwick.)

The Clerk: That is right. [102]

Q. Showing you what has been marked Exhibit No. 10, will you please explain what that is, Mr. Sedgwick?

A. That is an aerial photograph taken vertically that includes practically the entire town of Moses Lake. It is possible that there is a small portion in the extreme southwesterly portion of the town that was not caught by this photograph, but it is at a distance of a mile and a half from the city center. This photograph has been enlarged so that it represents a scale of eight hundred feet to one inch.

Q. Is it—by the way, when does it purport to have been taken?           A. I didn't hear that.

Q. When does it purport to have been taken?

A. The picture was taken on May 3, in 1953.

Q. And is it a fair representation of what it purports to show?

A. I think it is a very good photograph and shows quite clearly conditions as they existed at that time.

Q. Before you testify further from it——

Mr. Lutterman: I would like to offer it in evidence as an exhibit.

The Court: Any objection?

Mr. Krier: We'd like to see it.

Mr. Lutterman: I might say parenthetically I have [103] an extra copy of that which if admitted we will conform to this for the Court's use.

(Testimony of Alfred L. Sedgwick.)

The Court: Fine.

Mr. Krier: There will be no objection.

The Court: By the way, just for my own orientation, where is the bridge that used to go across the middle of Moses Lake on that old fill?

The Witness: Causeway?

The Court: That would be down here, somewhere (indicating)?

The Witness: Still there, your Honor.

The Court: Down off the picture?

The Witness: On the highway from——

The Court: Main highway we used to drive from Spokane across, yes.

The Witness: That is——

The Court: Out of the picture down to the left?

The Witness: Yes, southwest about a mile.

The Court: Yes, I have it in mind now.

(Plaintiff's Exhibit number 10 admitted in evidence.)

Mr. Lutterman: May it please the Court, this is an extra print which we have not as yet conformed, that is, with the north mark and the other marks on it. However, I will give it to your Honor and sometime during one of the [104] recesses we will conform it to the exhibit.

The Court: Fine.

Mr. Lutterman: May I say it is a duplicate material which is shown on the exhibit print. We will conform it in all respects to the

(Testimony of Alfred L. Sedgwick.)

The Court: Very well. Have a chair, Mr. Sedgwick.

Q. Mr. Sedgwick—

Mr. Lutterman: May I refer to the exhibit, your Honor? Perhaps if we could put this below here like this, would that be satisfactory, your Honor?

The Court: It is with me if it is with you.

Q. Mr. Sedgwick, there is a north arrow on the exhibit and that indicates the true direction north?

A. Yes, sir.

Q. I notice that you have also, or there has also been placed on this map red lines indicating section lines. Would you step down and explain that? So the Court can see and counsel as well.

(Whereupon, the witness approached the map.)

A. The north-south dash red line represents the boundary between Sections 14 and 13 and Sections 23 and 24 of Township 19 North, Range 28 East.

Q. Just a minute. Referring then to Exhibit No. 4, would you point that out, those same sections on the map, that is, Sections 13, 14? [105]

A. The intersection of those four sections on the photograph occur at this point on the map at the southeasterly corner of the area outlined in light blue.

Mr. Lutterman: We will have that conformed, your Honor.

The Court: Yes, I follow; I have it.

Q. I notice that you have—first, Mr. Sedgwick,

(Testimony of Alfred L. Sedgwick.)

you are familiar with the downtown trading center or business center of the City of Moses Lake?

A. I am.

Q. And you have been there on numerous times, have you?      A. Yes, sir.

Q. In the past few years including recently?

A. Yes, sir.

Q. And are you familiar with what would be considered as more or less the center of the business district of the City of Moses Lake?

A. Yes, sir.

Q. And would you indicate that point on the map or on the photograph?

A. The intersection of Division Street and Third Street has been marked with a small red circle to indicate the point of perhaps highest value of property in the town. The northeast corner is occupied by the Seattle-First National [106] Bank, Moses Lake Branch.

The northwest corner by the new J. C. Penney store. The southeast corner by a half block of business building with a drug store on the corner, and the southwest corner is still vacant.

Q. But that is what you would consider as the more or less the center of the business district of the city itself?      A. That is correct.

Q. Mr. Sedgwick, has the—or calling your attention first to Exhibit 4, are you familiar with the trackage in that area as shown in green on Exhibit 4?      A. Yes, sir, I am.

Q. And has there been any industrial develop-

(Testimony of Alfred L. Sedgwick.)

ment along the Milwaukee track shown in green and served by that track or by tracks running off of that track?       A. Yes, sir.

Q. Would you just explain and point out the industrial development?

A. Starting with the most southeasterly portion of the track within the city limits there are several industries taking service either from spur tracks or directly from the Y track extending southwesterly from the main branch. On the northeasterly side of the main branch there are a set of three industrial tracks on which there are approximately half [107] a dozen industries located (indicating).

Q. To identify it for the record, the tracks to which you are pointing are some tracks leading, shown in green, leading off of the main green track and located at what part of the city would you call that in reference to the city limits? That would be at the, where the track, approximately where the track crosses the south boundary of the city limits, is that correct?

The Court: Looks like there is a little jog in the city limits at that point. Isn't there a little jog?

The Witness: Yes, a considerable jog, yes, sir, where the track crosses Pelican Horn of Moses Lake and the city limits follows the line of the, northwesterly line of that portion of the lake.

A. That group of tracks and industries are located in what is officially known as Milwaukee Industrial Plat No. 1 which is a recorded plat.

(Testimony of Alfred L. Sedgwick.)

Q. By the way, while you are speaking of that, is there still industrial area sites available in that immediate area?

A. There are sites available within that plat and in other lands owned by the Milwaukee Road adjoining that plat.

Q. And for what purpose are those lands being held by the Milwaukee? [108]

A. For additional industrial sites. Continuing on toward the center of town spurs from the main line serve successfully a produce warehouse, a Standard Oil plant, a concrete—two concrete block and pre-mix establishments, a cold storage plant, which also handles produce, two beer firms and several farm implement, building material and seed warehouses, and those are from the—either on lands, partially on lands owned by the Milwaukee, but principally on privately-owned lands adjoining our tracks.

Q. Directing your attention towards the north city limits, Mr. Sedgwick, and particularly to the tracks shown in green in the yellow area there, that has been built recently, has it, do you remember, approximately?

A. Yes, sir. That track was built approximately three years ago to serve the plant of the United Concrete Pipe Company and is still serving that plant.

Q. Now, directing your attention to the area generally shown in Section 14, will you state whether

(Testimony of Alfred L. Sedgwick.)

or not to a great extent there is, that is vacant property at the present time?

A. There is a considerable area of vacant land in that portion of Section 14.

Q. What is it best suited for, Mr. Sedgwick?

A. Principally in the southeast quarter of that section and a large portion of it is vacant. [109]

Q. What is the best use of it?

A. It is best suited for industrial purposes and has been so zoned by the City of Moses Lake.

Q. That is the portion within the city limits of Moses Lake?      A. Yes, sir.

Q. And the portion, some portions of 14 which are outside of the city limits itself, are some of those portions still vacant?      A. Yes, sir.

Q. And will you state whether or not they could be suitable for industrial development?

A. Yes, sir, they would be and some of those lands are so used now.

Q. Are there other lands which are owned by the Milwaukee Railroad in the general area of Moses Lake available for industrial development?

Mr. Lutterman: I think this is a little duplicate but I want to—      A. Yes, there are.

Q. Will you just point out where those lands are?

A. The lands owned by the Milwaukee that are now available for lease or sale for industrial purposes are in the, or within or in the vicinity of Milwaukee Industrial Plat No. 1. Those are the

(Testimony of Alfred L. Sedgwick.)

only extensive holdings owned [110] by the Railroad at this time for that purpose.

Q. And what is the policy of the Railroad as evidenced by the activities in your office with respect to developing industrial areas for Moses Lake?

A. It is our job to acquire lands in anticipation of demand and to keep ahead of that demand and be prepared to provide locations with suitable trackage when the demand occurs.

Q. And what have you done in that respect, that is, what have you accomplished?

A. We are in the process of buying additional lands at Moses Lake and have made extensive plans for trackage to serve other lands that are privately-owned in that vicinity.

Q. Mr. Sedgwick, would you say that the presently available and suitable lands for industrial purposes which you have pointed out are sufficient to take care of the present foreseeable requirements in that respect for the City of Moses Lake?

A. Yes, sir, I believe that is true.

Q. You pointed out these areas on the map, Mr. Sedgwick, for the purpose of illustration. Would you similarly point them out on the picture which has been admitted as Exhibit 10?

A. Milwaukee Industrial Plat No. 1 and the lands owned by the Milwaukee in the vicinity are most readily identified [111] by the line across the lake which indicates the track and the light colored area in this vicinity.

The privately-owned areas which are available

(Testimony of Alfred L. Sedgwick.)

for industrial development along our existing tracks and by extensions of our tracks are first in the vicinity of our Y track extending to the southwest along the main track northwesterly of Milwaukee Industrial Plat No. 1, and at the northeast end of town where the map shows a large vacant area.

Q. And which would be within Section 14, of the section marked 14 on the map and on the picture?

A. That is correct, in the south, chiefly in the southeast quarter of Section 14 with some in the, a very small portion in the southwest quarter.

Q. Now, with reference to what you have marked on Exhibit 10 as being the center of the business district of the City of Moses Lake itself, have you, are you familiar with the distance from that point, for instance, to the industrial area in the vicinity of what you have described as the Milwaukee Plat No. 1 as compared, for instance, to the area which is shown on the map, Exhibit 4, and also the picture, Exhibit 10, as Section 13?

A. Yes, sir. By measuring that, the distance by means of my automobile meter, I determined recently by making two trips over both routes, that the distance from [112] the intersection of Division Street and Third Street to the intersection of Western Avenue and U.S. Highway No. 10 was one and one-tenth miles, whereas the distance from the intersection of Division Street and Third Street to the southwesterly corner of Section 13 was one and five one-hundredths miles or one point naught five miles, just slightly less.

(Testimony of Alfred L. Sedgwick.)

The Court: To what point now was that; from Division and Third to what point?

The Witness: To the southwesterly corner of Section 13 which is the nearest corner of Section 13, that distance.

The Court: I have it.

The Witness: My speedometer was one point naught five miles.

Mr. Lutterman: You may resume the stand.

The Court: Before you leave there, a couple of other things. I don't want to anticipate, but I am kind of curious to know in the first place, what is that development up at the very top of the map there that looks like a housing area in there, residential area, is that a residential area, right at the center of the top, what is that?

The Witness: That is housing, just southeasterly of the Larson Air Force Base.

The Court: All right, and what is the next one directly below that on the far side of the lake there? [113]

The Witness: That is Knolls Vista Addition or Subdivision.

The Court: Residential area?

The Witness: Which is purely a residential development, yes, sir.

The Court: Is the access to that from the main part of town by bridge there or something of that kind?

The Witness: Via the causeway and bridge

(Testimony of Alfred L. Sedgwick.)

which you see running in a north-south direction right through the middle of the map.

The Court: Yes, I see. Now, one finally. Is this a racetrack over here on the—that oval business on the——

The Witness: That is what it was used for. The local American Legion Post was given the free use of that for small car racing which has since been abandoned in that location.

Mr. Krier: Where is the racetrack?

(Whereupon, the witness indicated the race-track location on the exhibit.)

The Court: Mr. Krier's ears lopped forward when we mentioned that. (Laughter.)

Excuse me for interrupting. Come back and go ahead.

(Whereupon, the witness resumed the witness stand.) [114]

Q. Mr. Sedgwick, where ordinarily would industries which would be engaged in let's say primarily distribution into a trading center such as Moses Lake, where ordinarily would they locate with reference to the trading center?

A. Normally as close to the center of the trading area as they could secure adequate sites with track-age in or to minimize their local transportation costs.

Q. Are you familiar with the Pacific Fruit and Produce Company or what is referred to locally as Pacific Fruit and Produce Company?

(Testimony of Alfred L. Sedgwick.)

A. Yes, sir.

Q. And have you had any contacts with any representatives of that company with reference to locating in the Moses Lake area? A. Yes, sir.

Q. And will you state briefly when and with whom and the nature of the negotiations which you had?

A. In the fall of 1952 Mr. Hal Watson, the Traffic Manager for the Pacific Fruit and Produce Company in Seattle, phoned and asked if we had sites available at Moses Lake. I told him that we did and he said that he would like to have those locations pointed out to him and to his colleague, Mr. A. B. Nowlin. And on his invitation I went to their offices a few days later with maps and outlined sites that [115] were available for sale for their purposes.

Q. Did they indicate to you the nature of the plant they wanted to locate?

A. Yes, sir. They told me they were then servicing the Moses Lake area from their Wenatchee warehouse, but wished to locate a distribution warehouse in Moses Lake and also provide facilities for the processing and shipping of fresh produce raised in that area.

Q. What is the nature of the product or the products which they would distribute?

A. They indicated that potatoes and onions would be the principal shipments and—you say to distribute?

Q. Yes, to distribute?

(Testimony of Alfred L. Sedgwick.)

A. Oh, their distribution would be their regular lines of fruit and vegetables which they would ship into the territory.

Q. And the outbound?

A. The outbound was expected to be potatoes and onions in the ratio of about six to one.

Q. And did you then show them properties?

A. I gave them a map on which the available locations were marked, and they retained that and from time to time—and we discussed those locations either in additional visits to their office or by telephone.

Q. And when were the last negotiations you had with [116] them?

A. My last direct discussion with them was in January, 1953, at which time we had—they stated that they were not ready to start construction of any facilities in Moses Lake and that they would defer their decision regarding it and would let me know later when they decided to proceed.

Q. Have you had any further personal contact with them then?

A. I have not since that time because I found that in their more or less normal solicitation visits our traffic representatives had made contact with them and reported the same information, that the Pacific Fruit was still not ready to make a decision regarding their location there.

Q. Will you state whether or not you still consider them as a live prospect?

A. Yes, sir, I do.

(Testimony of Alfred L. Sedgwick.)

Q. Now, have you recently had any contact with any party who has the distribution of Olympia Beer for Moses Lake with reference to locating a distribution warehouse in that area?

A. Yes, sir, I have. A Mr. Fred Martin of Yakima phoned me to say that he had, together with associates, acquired the franchise for distribution of Olympia Beer in the Moses Lake area and that he wanted a trackage location.

Q. Are those negotiations still pending? [117]

A. Yes, sir. I met Mr. Martin in Moses Lake and showed him our properties and he made a tentative selection and within the past week has voluntarily advised that he was still interested in proceeding with that, with the construction of a warehouse on that location.

Mr. Lutterman: Will you excuse me for just a minute?

The Court: Certainly.

(Whereupon, Mr. Lutterman conferred with co-counsel.)

Mr. Lutterman: I believe that is all the questions we have.

The Court: Any cross?

### Cross-Examination

By Mr. Eastman:

Q. Mr. Sedgwick, the Milwaukee line that extends into Moses Lake is a branch line, is it not?

A. Yes, sir.

(Testimony of Alfred L. Sedgwick.)

Q. At what point does it connect with or take off of the main line?

Mr. Lutterman: If the Court please, I don't like to interrupt counsel, but this certainly isn't proper cross and we have an operating witness that we are going into it with, that feature of Mr. Eastman's.

The Court: You are free to inquire if you [118] want, but if they have got a witness that knows more about it——

Mr. Eastman: He testified that he was familiar with the service that had been provided.

The Court: I say you are free to cross if you wish, but if you want the details of it——

Mr. Eastman: I am not going into the details.

The Court: Yes, go ahead.

Q. Did you answer the question?

A. Warden, Washington.

The Court: Took off at Warden, Washington.

Q. That is known as Moses Lake branch line that extends into Moses Lake? A. Yes, sir.

Q. Do you know, Mr. Sedgwick, when that line was completed? A. I believe it was in 1912.

Q. In November of 1912, was it not?

A. I haven't pinpointed it.

Q. In the year 1912?

A. That is my recollection from our records, yes, sir.

Q. Now, at that time the community was known as Neppel? A. Yes, sir.

Q. Referring to——

(Testimony of Alfred L. Sedgwick.)

Mr. Eastman: What is that area?

Mr. Lutterman: No. 10, Mr. Eastman. [119]

Q. (Continuing): Referring to the aerial picture, Mr. Sedgwick, Exhibit No. 10, that picture was not taken by you, of course? A. No, sir.

Q. Do you know by whom it was taken?

The Court: It says on the back Pacific Aerial.

A. I believe Pacific Aerial Surveys.

Q. Do you know the elevation and the manner in which the picture was taken?

A. I don't know of my own knowledge. I merely know that it is represented as being a vertical photograph of that area.

Q. You haven't inquired as to the elevation at which the picture was taken? A. No, sir.

Q. Have you had sufficient experience in examining aerial photographs of this type to determine the approximate elevation from which this picture was taken, or is there any indication on the picture itself that would indicate to you the elevation?

A. No, sir; I don't know that there is.

The Court: I suppose you could figure it out couldn't you, by the eight hundred feet equals one inch? If you were a mathematician you could figure that out.

Mr. Eastman: I don't know that that would give [120] the elevation, your Honor.

The Witness: Your Honor, the photograph when first printed represented a scale of one inch to sixteen hundred feet and it has been enlarged to——

(Testimony of Alfred L. Sedgwick.)

The Court: What——

The Witness (Continuing): ——to make it more readable.

The Court: Two times?

The Witness: Yes, sir, which has the effect of making the picture four times as large as the original picture.

Mr. Lutterman: If it will serve to clarify in any way any question anybody may have about it, this is the original print from the original negative, and I think if—Mr. Sedgwick has explained that is blown up just twice.

The Court: If the point is important you can determine that without calling the witness. You can find out from the people who took it what the elevation was, I imagine, and stipulate on it without bringing a witness.

Mr. Eastman: Very well.

The Court: I still think though that if you were a mathematician you could figure out what the elevation was knowing that the—it seems to me they taught us something about that in the army.

Mr. Eastman: My notion is from the information that [121] is given on the original furnished by, or referred to by Mr. Lutterman, would probably be about sixteen thousand feet elevation.

Q. Would you say that is approximately correct, Mr. Sedgwick, or do you know?

A. I do not know, sir.

Q. Now, Mr. Sedgwick, at the time that the irrigation, local irrigation started in Moses Lake were

(Testimony of Alfred L. Sedgwick.)

there any substantial number of industries that the Milwaukee served in Moses Lake?

A. Perhaps a half dozen.

Q. And prior to that time and when the line was first built in, how many industries or industry locations, industrial locations were being serviced initially?

Mr. Lutterman: I didn't quite understand your question. Would you—

The Court: At the time the line was installed in 1912, is that it?

Mr. Lutterman: What industries were there?

Q. ((Continuing)): The number of industries that were being served initially?

A. I question whether there were any industries there prior to the building of the railroad. Certainly there were no industries requiring trackage to any great extent prior to that time. [122]

Q. Built in and subsequently some industries located on the trackage, is that your understanding?

A. Yes. Our records indicate that shortly after building the line leases of sites were made at various places for grain warehouses and fish warehouses and apple warehouses and that sort of thing.

Q. And then after the local irrigation started which, as I understand, was in about 19—in 1920 sometime?

A. The project was started in 1929 and the dam that impounded the water for this irrigation was completed in 1930.

(Testimony of Alfred L. Sedgwick.)

Q. And at that time then the industries increased to, as I understand, some half a dozen?

A. Well, I wouldn't make any direct connection between the completion of that, of the works for that irrigation district and the number of industries. I can't say. I haven't made such a comparison from the records.

Q. Subsequently in any event, as the Columbia Basin project got under way there were a number of industries that were established on the Milwaukee tracks in Moses Lake?

A. That is correct, yes.

Q. Now, when did the Milwaukee acquire the industrial trackage that you have testified they presently own in Moses Lake?

A. In 1944 and '45 as I recall the records. [123]

Q. And prior to that time you simply provided service to industries that were located upon private property?

A. That is not entirely true, no, sir. There were—because of extra widths of right-of-way there were places where warehouses had been built either wholly or partially on our right-of-way.

Q. On your right-of-way?

A. That is right, stationed around there.

Q. But the acquisition that was made in 1944 and '45 was land outside of the right-of-way that you acquired for, specifically for industrial purposes?

A. That is right.

Q. Now, what was the extent of the area that you acquired during those years?

(Testimony of Alfred L. Sedgwick.)

A. Approximately seventy acres.

Q. And can you indicate on the map, point out on the map, Exhibit 4, on the map Exhibit 4, where those industrial areas are located?

A. The lines are rather faint, but there is a rough triangle shown here with a figure 22 at the top and the area in question was embraced within those lines.

Q. You are pointing now to the portion of the track which beyond the line curves to the right?

A. That is right, and these lands were in the, almost entirely in the southwest quarter of Section 22. [124]

Q. Section 22. Now then, you may resume your chair. Now, in addition to that area acquired in '44 and '45, does the Milwaukee own any other industrial property in Moses Lake?

A. Only those areas that were acquired at the time the original right-of-way was acquired.

Q. As a part of the right-of-way acquisition?

A. Well, there were some extra areas at that time.

Q. Well, where were they located and what was their extent?

A. There is, (approaching map)—there is an area along the so-called Standard Oil spur and beyond it to the southwest. In fact, there are lines on this map that encompass that area.

Q. And are those lines, the area within that, identified in any way on the map?

A. No, sir, they haven't been. I don't know.

(Testimony of Alfred L. Sedgwick.)

Q. Would you take a pencil.

A. I think those lines as shown on this map are the meander lines of the lake and it happened that our purchase at that time coincided with those lines.

Q. Could you take a pencil and mark in that area which you have indicated, the letter "A" to indicate that area?

A. Yes, sir. (Does so.) [125]

Q. Now, when were those lands acquired?

A. To the best of my knowledge in 1912.

Q. At the time the line was constructed?

A. Yes.

Q. And what—how large an area is that?

A. Approximately thirty acres.

Q. About thirty acres. You may resume your chair.

Now, as I understand, in that thirty acres there have been industries located from time to time?

A. Yes, sir.

Q. And those are served by spur tracks from the Moses Lake branch line in Moses Lake?

A. Yes, sir.

Q. In the seventy-acre tract which you acquired in '44 and '45, approximately how many industries are now located there?      A. Six.

Q. Six. And are those served by industrial leader or spur tracks from the main branch line?

A. Yes, sir, they are served by industrial spur tracks.

Q. Now, I understand that up in Section 14 beyond the terminus of your line as it existed in 1948,

(Testimony of Alfred L. Sedgwick.)

you have made a further extension of your line, is that correct?      A. Yes, sir.

Q. And what was the length of that [126] extension?

A. I'd have to scale it from my map, Mr. Eastman. I think it is——

Q. Well?      A. Approximately a half mile.

Q. Approximately a half mile. And when was that extension made?

Mr. Lutterman: If the Court please, I think there may be some misunderstanding. Mr. Eastman is calling it the extension.

Mr. Eastman: I didn't intentionally do that, but——

Q. (Continuing): When was that trackage put in? All right?

The Court: We are agreed that we are not paying any attention to who uses the word extension or spur. Immaterial. Go ahead.

A. To the best of my recollection in the year 1951, either '50 or '51. I am not——

Q. And that trackage was in an area which was the approximate terminus of the proposed trackage that the Northern Pacific had in mind building into Moses Lake in 1948, is that correct?

A. Yes, sir, I believe that is true.

Q. Now, what was the purpose of the construction of that half mile of track?

A. To serve the United Concrete Pipe Corporation which [127] had established a pipe yard, pipe manufacturing business at that point.

(Testimony of Alfred L. Sedgwick.)

Q. Was that plant constructed on Milwaukee property?           A. No, sir.

Q. That was property that that company had acquired?           A. From private owners.

Q. Now, does the Milwaukee, in addition to the right-of-way for the trackage that was constructed, the approximate half mile of trackage that was constructed in 1951, own any property in that area?

A. None beyond our original station grounds.

Q. What was the width of the right-of-way that was acquired for the purpose of this trackage constructed in 1951?

A. I don't know, sir. We—I might say we had not acquired title to that right-of-way.

Q. How did you—what was the basis on which it is constructed?

A. The track was built on land owned by the industry.

Q. You have an easement over that land to reach the pipe company plant?

A. No, sir. To the best of my knowledge that track is owned by the industry. It is an extension or projection of our track, or our trackage in that it is connected by a switch to tracks owned by the Milwaukee, but— [128]

Q. Does the pipe company own an area in there of half a mile in length?           A. Yes.

Q. Does it utilize the full area?

A. No, sir.

Q. Are there other industries located in that area?           A. Yes, sir.

(Testimony of Alfred L. Sedgwick.)

Q. That are served by the Milwaukee trackage?

A. Yes, sir.

Q. Off of that same trackage that was built in 1951?

A. No, sir, off of our original trackage on our station routes.

Q. Well, I am talking about the plant that is in that part of Section 14 which you are now serving by a track built in 1951. Are there other industries in that immediate area?

A. No, sir, none served by trackage.

Q. Now, in that particular location I understood your testimony to be that there was vacant land that is suitable for industrial development, is that correct?

A. Yes, sir.

Q. What is the extent of that area in acres, would you say, that is, level land suitable for industrial development?

A. There are approximately eighty acres of land which [129] are adaptable to industrial purposes, not all of it entirely level by any means.

Q. But you think that industries could be located there?

A. Yes, sir.

Q. And could they be located in such a manner that they could be served by spur tracks from the Milwaukee line?

A. Yes, sir.

Q. Have you, as Industrial Agent, and in connection with attempting to interest industries in locating in Moses Lake, made known the availability of those locations for, to these potential industries in Section 14?

A. Not to any great extent.

(Testimony of Alfred L. Sedgwick.)

Q. But you have pointed it out to anyone who inquired about available industrial sites in Moses Lake, have you not?

A. Not particularly. We pointed out the lands that we owned and already had tracks to.

Q. Yes, but since your track reaches that territory you have, in talking to potential shippers or industries, made known to them the fact that that land was available, have you not, whether it is particularly or otherwise?

A. I don't remember any particular case, Mr. Eastman.

Q. Did you have anything to do with the location of the pipe company in this area?

A. No, sir, I did not personally. [130]

Q. Well, did your company?

A. I had no knowlege of the negotiations.

Q. Well, do you know whether or not your company had any negotiations with this pipe company that led to the location of the industry there?

A. I remember discussions concerning it, but I had no direct connection with——

The Court: Are you near finished with this witness? Otherwise I think we will take our morning recess.

Mr. Eastman: I think there will be a little more.

The Court: Very well. Let's take our morning recess at this time.

(Whereupon, at ten-fifty o'clock a.m., a recess was had until eleven-ten o'clock a.m. at

(Testimony of Alfred L. Sedgwick.)

which time respective counsel being present, witness Alfred L. Sedgwick resumed the witness stand for further cross-examination by Mr. Eastman, and the following proceedings were had, to wit:)

Q. Mr. Sedgwick, at my request you indicated on the map by the letter "A" an area of some area which you said was being developed industrially by the Milwaukee. Now, in addition to that you testified that there was some seventy acres that was also a part of the industrial properties owned by the Milwaukee and located— [131]

A. May I make a correction, Mr. Eastman? I testified that we had acquired seventy acres at that point.

Q. Yes? A. That had been your question.

Q. Yes, you acquired seventy acres?

A. Yes, that is right.

Mr. Eastman: I would ask—would you hand this to the witness?

(Whereupon, a red pencil was handed the witness.)

Q. Would you outline on Exhibit 4 that area which comprises that seventy acres and indicate the area by the letter "B"?

A. It is necessarily approximate because of the scale.

Q. As I understand then, the area that you have outlined in red and marked Exhibit "B" shows the

(Testimony of Alfred L. Sedgwick.)

approximate location—marked “B” on Exhibit 4, shows the approximate location of the lands acquired by the Milwaukee?      A. Yes, sir.

Q. Now, you also testified, Mr. Sedgwick, with respect to some eighty acres of vacant land in Section 14 that is available for industrial development in your judgment. Would you outline the approximate location of that land and mark that Exhibit—mark it with the letter “C”?

(Whereupon, the witness does as requested.)

Q. The area which you have now outlined in red on the map and identified with the letter “C” is the location of the approximately eighty acres in Section 14 which you say is susceptible to industrial development?      A. That is correct.

Q. Now, does that include the area upon which the pipe company is presently located, or is that location outside of the eighty-acre tract that you marked as “C,” or identified by the letter “C”?

A. Most of the pipe company’s land lies outside of the eighty acres. Only a small portion of the pipe company’s land is within.

Q. Yes. And do you know the area of the pipe company land approximately?

A. Approximately fifty-two acres.

Q. And—yes. And how much of that fifty-two would lie within the area you have designated with the letter “C”?

A. Not over five acres possibly.

Q. So there would be some forty-seven acres of

(Testimony of Alfred L. Sedgwick.)

the pipe company property in addition to the eighty acres that you have indicated?

A. That is right.

Q. I note that in locating this area "C" it is all within the corporate limits of the City of Moses Lake. What about the remaining area in Section 14 which lies to the right [133] or to the east of area "C"? Is that, or is that not also susceptible to industrial development?

A. Most of that area is topographically unsuited to industrial development.

Q. Thank you. Now, in the area to the south and west of the corporate limits of Moses Lake, I will ask you whether or not the Milwaukee has acquired any additional property for industrial purposes outside of the corporate limits?

A. Yes, sir. We have acquired some land that lies outside of the corporate limits.

Q. And what is the extent of that area approximately?

A. The acquisition to date in that area is approximately five acres.

Q. Well, now, you say to date. I take it then that you have plans for further acquisition?

A. Yes, sir.

Q. And what is the extent of the acquisition of your present plan?

A. A total of eighteen acres at that point.

Q. And is that area shown on the map, Exhibit 4, or does it go beyond the limits of Exhibit 4?

A. It is on that map.

(Testimony of Alfred L. Sedgwick.)

Q. All right. Could you then locate by outlining the approximate location of the eighteen acres which you have in mind, and indicate that area by the letter "D"? [134]

(Whereupon, the witness does as requested.)

Q. You have indicated the eighteen-acre area that you have just testified to by the area outlined in red and identified by the letter "D"?

A. Yes, sir.

Q. Now, are there any other areas in the vicinity of Moses Lake, either within or without the corporate limits, where the Milwaukee has acquired or plans to acquire land for the purpose of industrial development?

A. Have to ask you to define "vicinity," Mr. Eastman.

Q. Well, within a radius of two or three or four miles?

Mr. Lutterman: If the Court please, it seems to me that we are going a little beyond the issues here. Certainly I don't think that we should divulge any plans we might have unless it was definitely material to the issues here. When he speaks of radius three, four miles away, it seems to me we are—

The Court: Well, of course, here again I can't tell what the purpose is. I must assume the good faith of counsel in not inquiring—

Mr. Eastman: We are not attempting to get any information that would be prejudicial to them or

(Testimony of Alfred L. Sedgwick.)

beneficial to us for traffic or other standpoints. It is pertinent to the issue.

The Court: I have the greatest of confidence that [135] neither the counsel involved in this case would do such a thing, and I mean it seriously, so that if you regard it as material, I will have to let you put it in.

Mr. Eastman: We do regard it material in our case, however.

The Court: Go ahead, but keep in mind, however, do not go beyond what is legitimately necessary for this case.

Mr. Eastman: Yes, very well, your Honor.

A. I will answer that by saying no specific plans.

Q. Now, in your direct testimony you stated that you had definite plans to acquire lands and extensive plans to develop and serve them. Now, in connection with these various areas that you have indicated on the map, it being lands acquired for industrial development by the Milwaukee, what did you mean with respect to plans for developing of those lands?

The Court: I think this could be covered in the chair just as well. It is easier for the Reporter to get it and all.

A. I mean by that that we have determined the feasibility of serving the area by trackage, by making sketches of tracks and roadways and the salient features of development of the various parcels that we are acquiring or contemplated to acquire.

Q. That would be the areas which you have iden-

(Testimony of Alfred L. Sedgwick.)

tified [136] on the map by the letters "A," "B," "C" and "D"?

A. Yes, sir.

Q. Now, it would be your purpose, would it not, in connection with that development, to serve all of those by any necessary industrial or spur trackage that was required depending upon the industry that was located there?

A. That is correct.

Q. Now, when you talked to the representatives of the Pacific Fruit and Produce Company, I think Mr. Watson, you said you furnished him a map showing your locations in Moses Lake?

A. The map actually went to Mr. Nowlin.

Q. Who is Mr. Watson's assistant?

A. No, sir. Mr. Nowlin then identified himself to me as the Assistant Secretary of the Gamble Pacific Company which was the controlling company of Pacific Fruit and Produce, Seattle Branch.

Q. It is your understanding, is it not, Mr. Sedgwick, that Pacific Gamble Company is the parent company and the Pacific Fruit and Produce Company is a division?

A. Yes.

Q. To whom you furnished the map. What areas did you include as being available for their examination?

A. I included two areas which they said would be suitable, one of them being a series of lots in what is known [137] as Milwaukee Industrial Plat No. 1, and the other, an area at the extreme north end, the area designated as "B."

Q. Well, now, the first tract of Industrial Plat No. 1 is that within any of the areas that you—

(Testimony of Alfred L. Sedgwick.)

A. That lies wholly within area "B."

Q. Yes. Now you say it was included. Now, did your map include other locations than those two in which they indicated some interest?

A. No, sir. I don't recall that it did at that time. My recollection is that there were just two locations designated on that map.

Q. Well, now, you frequently have inquiries for possible locations from shippers, do you not, of that type?

A. Not necessarily of that type, but we have——

Q. I mean inquiries of that type?           A. Yes.

Q. Yes. And you indicate to the shipper what areas you have available and if necessary take them out and show them the area, do you not?

A. That is right.

Q. And then the shipper after he sees the area determines whether that is suitable for his purposes and whether he wants to locate there?

A. Yes, sir.

Q. And that was the purpose of furnishing this information [138] to the Pacific Fruit and Produce people was to see whether or not it did suit their purpose?           A. Yes, sir.

Q. Now, have you ever in connection with those negotiations entered into any lease or contract for the lease or sale of any of your property to that company?           A. No, sir.

Q. Did you ever propose a lease or sale to them?

A. Yes, sir.

(Testimony of Alfred L. Sedgwick.)

Q. And I take it that they were not interested in consummating the negotiation?

A. They were not at that time. They asked for quotation of price on both parcels and——

Q. That, as I understand, was in January, 1953?

A. The actual quotation of price was made in the fall of 1952.

Q. You testified about plans to develop the lands. Do you have—are those plans in writing or are they simply plans that you have in your mind with respect to these areas in the Moses Lake area?

A. Well, we have actually made sketches and—our engineers have made sketches and we have made prints of those sketches and they are under consideration by other departments.

Q. For study purposes?

A. That is right, to determine the feasibility of the [139] track plan suggested and so on.

Q. Do you have any of those plans with you?

A. No, sir.

Q. If we wanted later to examine them would you be able to obtain them from your Seattle office?

A. Yes, sir.

Q. Referring again to Exhibit 4 and particularly——

Mr. Eastman: May I approach?

The Court: Certainly, of course.

Q. (Continuing): ——the area which is outlined in blue and is marked "N.P. Farm Unit No. 71," I will ask you to state whether or not if an industry was desirous of locating on that tract, that

(Testimony of Alfred L. Sedgwick.)

you feel that the Milwaukee would be able to, or should serve it with private spur track from your Moses Lake line?

Mr. Lutterman: Let me get that question again, counsel. It was a little involved and I frankly didn't follow you.

(Whereupon, the Reporter read back the last question.)

Mr. Lutterman (Continuing): I would like to object to one portion of it, whether they should serve it. I think that is——

The Court: Of course it is stated, one or the other is what you want, isn't it? [140]

Mr. Lutterman: Whether they could serve it, I think.

The Court: Do you want it "could" or "should"?

Q. I will ask you whether or not they should serve it? In other words, you——

The Court: Could do it no matter? I mean, it is just a matter—no question of physical problem of building a track. What you want to know is should they. isn't it?

Mr. Eastman: There might be a physical problem, your Honor.

Q. (Continuing): Do you feel that that land is contributory to your Moses Lake branch line or that land?

Mr. Lutterman: If the Court please, it seems to me—I would like to object on the ground that here we are getting into the realm of strictly con-

(Testimony of Alfred L. Sedgwick.)

clusions of what is contributory or what his opinion might be, or Mr. Eastman's opinion might be or what my opinion may be. That certainly is not relevant in any way, as I see it, to the issues here.

The Court: No, I think we will let the witness state his opinion for whatever it is worth. In the final analysis I am not going to be bound by his opinion, but I will hear what his opinion is.

A. If the expense of the facilities and the service was economically justified, then certainly I would recommend serving. [141]

Q. Would you recommend that a spur track be built from your line in Moses Lake to reach the land in Farm Unit No. 71?

A. If there was enough business to warrant it, Mr. Eastman.

Q. Well, then, you regard as, I take it, the area in Farm Unit No. 71 as tributary and a part of the Moses Lake territory?

A. It is definitely on the fringe as a practical matter. Normally the intervening land would be developed first and if Moses Lake and its business grew to the point where that area was necessary to accommodate the growth of industries, why I would recommend projecting a track to it.

Q. Do you envision the industrial development of the area intervening between where you have identified the area which you said was susceptible to industrial development and the N.P. farm unit, as industrial lands?

A. It can't be answered directly yes or no. The

(Testimony of Alfred L. Sedgwick.)

easterly half of the Southeast Quarter of Section 14 is largely topographically unsuited to industrial development because of the steepness of the slope.

Q. Yes. The same thing is true, is it not, with respect to the easterly half, westerly half of Section 13?

A. I would say it is true as to the westerly half of the Southwest Quarter of Section 13. The east half of the Southwest Quarter is at, mostly at such a grade that it could [142] be developed.

Q. But 71 is up on top of the hill on the flat territory, is it not?

A. Yes, sir. 71 is quite flat and level.

Q. When I referred to Farm Unit 71 I referred to the area indicated as Farm Unit 71 on Exhibit 4, and that is the reference that you made?

A. Yes, sir. I am familiar with it.

Mr. Eastman: That is all, thank you.

### Redirect Examination

By Mr. Lutterman:

Q. Mr. Sedgwick, Mr. Eastman asked you concerning the development of the community now known as Moses Lake, originally known as Neppel, for the period from the time the track was built in 1912 up until the middle of the forties which you spoke of. There wasn't any substantial development; isn't that correct? In other words, the Milwaukee more or less pioneered it during that period of time?

(Testimony of Alfred L. Sedgwick.)

Mr. Krier: May it please the Court, we ask for a ruling that the witness be allowed to do the testifying.

The Court: Yes, you must avoid leading. However, sometimes we lead to get over material that everybody agrees on. Now whether that is agreed on or not, I don't know. But [143] go ahead.

A. Well, the facts speak for themselves in the records of population and the exhibits showing shipments in and out and the development in the way of building of warehouses for shipping apples, and fish and other products began in the twenties and labored along in a small way through the twenties and thirties and the big impetus to population and shipping commenced in, I'd say, the latter part of 1942. When I last saw it before the war there was some building going on, some small signs of expansion, and upon my return in 1946 the community was obviously several times as large as when I had last seen it before.

Q. Mr. Eastman also asked the question—I don't mean to misquote anyone—to the effect that it was not until after the Columbia Basin project, irrigation, that there was this development. Now I think it is in the record already, but purely for the purpose of clarification, was this development in Moses Lake and the shipping out of there before or after the irrigation from the Columbia Basin project?

A. The irrigation in the Moses Lake Irrigation District reached its peak about 1947 and that was

(Testimony of Alfred L. Sedgwick.)

the first year that our carload shipments, according to these exhibits, exceeded three thousand cars, and the outbound shipments have not exceeded that in any year since 1947, which is a pretty good demonstration that the advent of water in 1952 in the Columbia [144] Basin irrigation project nearby did not bring about the maximum amount of shipping activity.

Mr. Lutterman: That is all, thank you.

The Court: That is all, Mr. Sedgwick.

Mr. Eastman: I just, if I may, in view——

The Court: Questions? Of course, go ahead.

#### Recross-Examination

By Mr. Eastman:

Q. You referred to the outbound shipments, I take it, in 1947 of fruits and vegetables as being over two thousand?

A. I didn't refer to fruits and vegetables, sir. I referred to the total outbound shipments. I think you will find the figures close to twenty-six hundred carloads.

Q. Yes, but of that twenty-five hundred sixty-eight carloads were fruits and vegetables? If you care to look at the Exhibit 5, I think, which you had reference to.

The Court: Yes, that is right.

A. That is correct.

Q. And it was because of that figure largely that

(Testimony of Alfred L. Sedgwick.)

you stated the assumption that that indicated that the irrigation development in Moses Lake was substantial even before the Columbia Basin lands came in?      A. Yes, sir.

Q. Well, now, isn't it a fact, Mr. Sedgwick, that a [145] large part of that revenue or those carloads were apples?      A. I don't believe so, sir.

Q. You don't believe so?      A. No, sir.

Q. Would you say that a part of that tonnage originated from the Wenatchee territory which was trucked down to Moses Lake because of car shortages at that time in the Wenatchee area?

A. That is outside my realm, Mr. Eastman. I can't testify.

Q. You wouldn't know? But the statement that you made and the conclusion you draw was based upon the volume of traffic shown in 1947 on Exhibit No. 5?

A. Yes, sir, that was the peak of the shipment of produce.

Mr. Eastman: Thank you. That is all. Thank you.

Mr. Lutterman: That is all.

The Court: That is all, Mr. Sedgwick. Call your next please.

(Witness excused.)

Mr. Lutterman: Mr. Crippen. [146]

## CURTIS E. CRIPPEN

being first duly sworn on oath, was called as a witness on behalf of the Plaintiff and testified as follows:

## Direct Examination

By Mr. Lutterman:

The Clerk: State your full name and spell your last name.

The Witness: Curtis E. Crippen, C-r-i-p-p-e-n.

Mr. Lutterman: If it please the Court, Mr. Krier and I stipulated before trial that their map, the N.P. railroad map for the State of Washington, should be included as one of the exhibits. Now, I don't know whether it has ever formally been put in or not. I spoke of it before.

Mr. Krier: Well, put it in right now on stipulation.

The Court: Has it been identified yet?

Mr. Krier: I doubt it.

The Court: Well, let's put it in.

Mr. Krier: I had it somewhere.

The Court: If it is not immediately available, find it at the noon hour and put it in when we resume.

Mr. Lutterman: I wanted to use it in connection with this witness.

The Court: Oh, all right, yes. What number will it get?

The Clerk: Marked as Plaintiff's or [147] Defendant's?

The Court: Plaintiff's, I take it.

(Testimony of Curtis E. Crippen.)

Mr. Lutterman: It is really their exhibit, but I don't care.

The Court: It doesn't make any difference.

Mr. Lutterman: It is just a map.

The Court: Give it the next number.

The Clerk: Plaintiff's Exhibit No. 11 has been marked for identification.

The Court: All right, offered and admitted without objection?

Mr. Krier: That is correct, your Honor.

(Plaintiff's Exhibit number 11 marked for identification and admitted in evidence.)

Mr. Lutterman: I don't know whether you have an extra copy for his Honor. We can furnish him with one. If the Court please, it is simply a map produced by the Northern Pacific showing the various railroad lines in the States of Washington and Idaho, I believe, a portion of Idaho.

The Court: Shows other lines?

Mr. Lutterman: All lines, that is of the whole state.

The Court: Handy thing to have for future [148] reference. We will appropriate that one right now.

Mr. Krier: We will let you keep that one. They are used in commerce cases and everyone wants one.

The Court: Now you know what they say about possession. Very well, proceed.

Mr. Lutterman: Let me just see this. If you will show it to the witness maybe he can point out to his Honor the point we are speaking of.

(Testimony of Curtis E. Crippen.)

Q. Mr. Crippen, showing you Exhibit No. 11——

Mr. Lutterman: Is that correct, Miss Clerk?

The Clerk: Yes, 11.

Q. (Continuing): ——which has been stipulated to be a map showing the lines of railroads in the State of Washington insofar as material here, can you identify the Milwaukee main line at the point of Warden? A. Yes.

Q. Let's make a circle on the map in red so that—that is the general area we are speaking of and perhaps——

The Court: Maybe we had better make it with a pen because there are so many red marks already on there. Why don't you make it with a pen? Stand up and do it right there so you won't tear the paper.

(Whereupon, the witness did as requested.)

The Court (Continuing): The witness has drawn a pen line around the word "Warden" and around the little dot [149] that apparently indicates the location of the station.

Mr. Lutterman: If you will just let him retain the map. I forgot to ask him the preliminary questions.

Q. Mr. Crippen, you reside in Seattle, do you?

A. Yes, sir.

Q. And you are employed by the Milwaukee Railroad? A. Yes, sir.

Q. In what capacity?

A. General Manager of lines west of Mobridge, South Dakota.

(Testimony of Curtis E. Crippen.)

Q. And as such what are your duties, or what do you have immediate charge of?

A. Supervision of the operation and maintenance of all lines of the Milwaukee Road located west of the Missouri River at Mobridge, South Dakota.

Q. And, of course, included within that are the lines in the State of Washington, particularly the lines in Grant County and Adams County, Washington?

A. Yes, sir.

Q. And referring to Exhibit No. 11, the Milwaukee main line extends through that—

The Court: It is Grant County, just barely though. Adams' line is just a short distance away.

Q. (Continuing): The main line extends through Grant County and one of the stations on the main line in Grant [150] County is the station designated as Warden, is that correct?

A. That is correct.

Q. Extending from Warden there is a branch line, is that correct?

A. Yes, sir.

Q. And will you just explain the branch line as it leaves Warden?

A. The branch line that leaves the main track at Warden and extends in a northwesterly direction through Tiflis, Seiler, other stations to Moses Lake with another branch line extending from Tiflis in a northeasterly direction to Marcellus.

Q. And are there intermediate stations between Tiflis and Marcellus?

A. Yes, there are several intermediate stations.

Q. Will you name them?

(Testimony of Curtis E. Crippen.)

A. Ruff, Moody, Batum, Lauer, Jantz, Packard.

Q. And are there——

The Court: Did you leave Schoonover out?

A. Schoonover is also one.

Q. Now, there are—are there stations intermediate to Tiflis and Moses Lake?

A. Yes, station at Seiler, McDonald, Goodrich intermediate between Tiflis and Moses Lake.

Q. Do you consider that one branch from Warden to [151] Tiflis to Moses Lake and another branch from Tiflis to Marcellus, or just how is it?

A. We consider it one branch from Warden to Tiflis to Moses Lake and one branch from Tiflis to Marcellus.

Q. Now, of all the stations which you have named on all of the branch line beyond Warden, will you state which, if any, are what we call agency stations?

A. The only one beyond Warden on either or both of the branch lines is Moses Lake.

Q. And is Warden itself an agency station?

A. Yes.

Q. And all the other stations which you have named are what we term, or what are known as non-agency stations?      A. That is correct.

Q. Will you describe to the Court or explain to the Court the difference between an agency and a non-agency station?

The Court: That has been covered, hasn't it? Let's not go over it again. You covered that yesterday.

(Testimony of Curtis E. Crippen.)

Mr. Lutterman: It wasn't covered quite completely and they made a point of it, and I don't know what——

The Court: All right, go ahead, cover it, please.

A. An agency station is a station at which an agent is maintained to conduct business of the railroad. A non-agency station is a station at which an agent is not maintained [152] and the business of the railroad as far as the accounting and paper work is concerned is conducted at some other location, but the physical loading and unloading is accomplished at the non-agency station.

Q. Is it nevertheless considered a station for tariff and timetable purposes? A. Yes.

Q. And shown as such in tariffs and timetable?

A. That is right.

Q. Is that rather common, not only on branch lines but also main lines?

A. Yes, it is quite common. As a matter of fact, on this one division, for example, we have eighty non-agency stations.

Mr. Lutterman: That is the only reference I need to make to that map.

Q. Drawing your attention now to, Mr. Crippen, to Exhibit No. 4, which is on the easel, you are familiar with that map, are you?

A. Yes, sir.

Q. And I don't think it is necessary to go through the explanation of it. Do you understand that the green represents what?

(Testimony of Curtis E. Crippen.)

A. The Milwaukee trackage.

Q. Now, there has been some testimony with respect to [153] traffic destined to Larson Air Base. Will you point out the Air Force track here, or the track leading to the Air Base?

(Whereupon, witness approached map.)

A. The single cross hatched line starting northwesterly of the center of the map and extending in a northwesterly direction off the northwest corner of the map and labeled, "U. S. Government Railroad," is the trackage extending to the Larson Air Force Base.

Q. And traffic destined to or coming from the Air Base itself is interchanged where?

A. At Moses Lake onto trackage of the Milwaukee Railroad within the corporate limits and as shown in green in the northwesterly area of the map.

Q. And so that all such traffic would show up in the accounts and be considered as business of the station of Moses Lake?

A. The actual delivery and receipt of carloads is accomplished in the City of Moses Lake and the accounting for those cars is included within the Moses Lake agency accounting.

Q. Whereas, the shipments to or from the other stations, non-agency stations which you have mentioned, while the accounting work would be done, the account is separate, is that right, from the account of Moses Lake proper? [154]

(Testimony of Curtis E. Crippen.)

A. That is correct.

Q. Each station has its own account although the work for all may be done at one particular location?

A. That is right; it is done that way for convenience and economy.

Q. Referring further to Exhibit No. 4 and particularly to the piece of track which is shown in green on that portion of the exhibit which is colored in yellow, what is that track?

A. That is an industry track serving the United Concrete Pipe Company.

Q. And that is a track owned by the industry?

A. Yes, sir.

Q. And the operation—our operation over it is covered by standard spur track agreement which is used commonly by all railroads?      A. Yes, sir.

Q. And do you know under the arrangement whether—you may resume your chair—the Milwaukee would have the right to use it in order to serve other industries which might connect their tracks with it?

A. The Railroad has the specific right under the agreement to use the trackage for such purposes as seems feasible.

Q. So that if other industries were to locate in that [155] area, would it be feasible or possible for the Milwaukee to serve them either by that track or by the construction of some other similar track?

A. It would.

Q. And particularly with reference to the area

(Testimony of Curtis E. Crippen.)

which has now been marked as "C"—I don't know just exactly—on Exhibit 4, would it be feasible or possible for the Milwaukee to serve that area with trackage by either connections from the existing concrete spur or by other connections directly with its main line at that point?

A. It would be both feasible and practical.

Q. And if industries did locate there needing trackage would that be accomplished by the Railroad, the trackage?           A. Yes.

Q. You are familiar in a general way with the existing trackage in the City of Moses Lake?

A. I am.

Q. Milwaukee trackage. And at present in addition to the main line, will you state whether or not there are several tracks at various points leading from the main line serving industries or industrial areas and point them out from the map?

(Whereupon, the witness approached the map.)

A. There are several such tracks serving industries. They are indicated on the map in green adjacent to the main [156] track which extends through the town of Moses Lake, tracks indicated in the area which has been marked "B," and on the opposite side of the track at that same location, there are tracks in the area marked "A" and there are additional tracks in the area extending from the area marked "A" toward the area marked "C,"

(Testimony of Curtis E. Crippen.)

all of which has been shown substantially as shown on Exhibit 4.

Q. By the way, where is the station and station grounds? I don't know whether we have identified that yet on the map.

The Court: It says depot on there somewhere.

Mr. Lutterman: Yes.

(Whereupon, the witness indicated same on map.)

Q. That is the location of the station and station facilities? A. It is, yes.

Q. And there are tracks at that point also serving? A. Yes, sir, there are.

Q. Serving industries and unloading facilities?

The Court: Have you come to a sub-break here?

Mr. Lutterman: Yes.

The Court: Well, it is a moment or two after twelve, so I think we had better adjourn for lunch. How about one-thirty? [157]

Mr. Lutterman: Satisfactory.

The Court: We are moving a little bit slower than was anticipated, aren't we?

Mr. Lutterman: This, incidentally, is my last witness, if the Court please, and I shouldn't be much—no, I have one more.

The Court: I am not chiding you, but was wondering if we aren't a little behind schedule?

Mr. Lutterman: I have one short witness, but almost through with this one.

(Testimony of Curtis E. Crippen.)

The Court: Would one-thirty be convenient for you?

Mr. Eastman: Yes.

The Court: We will adjourn until one-thirty.

(Whereupon, at twelve-two o'clock p.m. a recess was had until one-thirty o'clock p.m., at which time respective counsel being present, witness Curtis E. Crippen resumed the stand for continued direct examination by Mr. Lutterman and the following proceedings were had, to wit.)

Mr. Lutterman: By way of explanation, if the Court please, for the next couple of questions I want to, I think I will have to qualify my witness a little further.

The Court: Go ahead. [158]

Q. Mr. Crippen, are you a graduate engineer?

A. Yes, sir.

Q. And when and where did you graduate?

A. Graduated from the University of Minnesota in 1936 with the degree of Bachelor of Science in civil engineering.

Q. What has been your engineering experience since that time?

A. About ten years of engineering experience in various capacities on the Milwaukee Railroad.

Q. And in that connection what type of engineering work would you do? Just explain it to the Court.

A. Construction, surveys, maintenance, things of that nature.

(Testimony of Curtis E. Crippen.)

Q. And since that time you have been in the Operating Department of the Railroad?

A. Yes.

Q. And, of course, the Engineering Department as such is part of the Operating Department?

A. That is right.

Q. And at present you are General Manager or in charge of the entire operations of the Railroad west of the Missouri River?

A. That is right.

Q. Calling your attention to the map, which is Exhibit 4, are you familiar with the area which is designated as [159] Section 13 on that map?

A. I am.

Q. And I believe you have already testified that you are familiar with the Milwaukee track which is shown in green in Section 14?

A. Yes.

Q. And would you state whether or not it would be feasible to extend the track from the Milwaukee tracks in Section 14 into the area shown on Section 13 and enclosed in blue marks?

A. It would be feasible.

Q. And in the same vicinity as down to Farm Units 71 and 70 as shown by the track represented by a blue line on the exhibit?

A. Yes.

Q. Will you also state whether or not it would be feasible for a connection to be made between the track shown in blue and labeled "the present proposed N.P. tracks," and the track shown in red which is labeled the "1948 proposed N.P track," and extending into Section 14?

A. It would be feasible.

(Testimony of Curtis E. Crippen.)

Q. You are familiar, of course, with the loadings of the, that is the tonnage, generally speaking, handled by your Railroad on lines west?

A. Yes. [160]

Q. And comparatively how does the density of traffic on lines west compare with traffic densities on other parts of the line?

A. It is relatively light compared—on our western lines as compared with our eastern lines.

Q. And particularly with reference to that portion of the line between the terminals of Tacoma and Seattle and Spokane, how is the relative density of traffic in that part of the line?

A. The traffic density in that area is relatively light. There is little contributing to build traffic in that area. The only development that has appreciably contributed to traffic development in that area is the Moses Lake development.

Q. And there are no other areas in what we think of generally as eastern Washington or in the production areas of eastern Washington which are tributary or served by the line?

A. That is right, we do not hit the productive areas with our line.

Q. And Moses Lake area is really the first area of that character on our line in the state which is so developed?      A. That is right.

Q. And the traffic on the line itself, of course—are you familiar with the traffic figures generally? I [161] don't mean in detail, but generally prior to, let's say, 1940 on the Moses Lake branch?

(Testimony of Curtis E. Crippen.)

A. Yes.

Q. And what was the density of traffic for the period prior, let's say, to 1940?

A. Well, it was what might be termed sub-marginal. It was extremely light and definitely of the submarginal character.

Q. And, of course, the traffic has increased but even with the present state of the traffic, how would you characterize it on the branch line with respect to density?

A. No better than marginal, probably sub-marginal.

Q. And then what effect would the loss of revenues or the loss of the revenue producing capacity of the line have on the line?

A. Well, in my opinion, it would jeopardize the future of the line.

Mr. Lutterman: I think that is all; thank you, Mr. Crippen.

#### Cross-Examination

By Mr. Krier:

Q. Mr. Crippen, you stated that it would be feasible to construct a track from the end of your line as shown on Exhibit 4 up to Section 13? [162]

A. Yes, sir.

Q. As also shown on Exhibit 4, is that correct?

A. Such a track is not shown on Exhibit 4.

Q. No, but you say it would be feasible to construct such a track? A. Yes.

Q. Have you made any projections or proposals on paper for such a track?

(Testimony of Curtis E. Crippen.)

A. Yes, we made some preliminary investigations, developed some preliminary plans on what might be accomplished.

Q. Have you got those with you?

A. No, sir, I do not have.

Q. Where are they?           A. In my office.

Q. Will you produce those for us? \*

A. Be glad to.

Q. All right. Now, do you recall the grade that it would take to get up there?

A. Well, of course, that is a matter of some adjustment and of figuring. We worked out a grade of two per cent on the one line that we projected. Might be possible with detailed examination to improve that.

Q. How long is the track?

A. Well, one of the lines to which we gave consideration was about eleven thousand feet. Another one to which [163] we gave consideration, as I recall it, was between five and six thousand feet.

Q. Eleven thousand feet, is that right?

A. Yes.

Q. A little over two miles, isn't it? Mr. Crippen, you have other spurs around as in area "C" there shown on Exhibit 4, or other track, I should say, leading to industries?

A. We have no tracks in area "C," if I understand your question correctly.

Q. Oh, you haven't? I thought that was where the pipe plant was, cement pipe?

(Testimony of Curtis E. Crippen.)

A. Area "C," as I understand the exhibit, does not include the pipe plant.

Q. Well, where is the pipe plant then?

A. It is adjacent to the green colored track in the yellow shaded area.

Q. I see, and it doesn't extend into the area marked "C" on Exhibit 4?

A. Well, as I understood the previous witness, there was about five acres of the pipe company's property included in area "C."

Q. You don't know that of your own knowledge?

A. No.

Q. You have some tracks leading into the pipe company, have you? [164]

A. Yes.

Q. How long are they?

A. I don't have personal knowledge. My recollection of the previous witness' testimony was half a mile.

Q. About two, three thousand feet, is that about right?

A. I would imagine so, judging from the map and the previous testimony.

Q. Then you have tracks leading off your main line into industries along area "B" as shown on Exhibit 4?

A. Yes.

Q. How many do you have there?

A. There are several tracks in that area.

Q. Several. Meaning about how many?

A. The exhibit "C" is three stub end tracks and three or four-yard tracks in that area.

Q. What is a yard track?

(Testimony of Curtis E. Crippen.)

A. A track used for operational purposes.

Q. Now, then, you have some tracks down in what is marked as area "D" in Exhibit, on Exhibit 4?

A. We have no industrial tracks in the area marked "D."

Q. You can sit down. Along your line I believe you testified from—you have some stations along your branch there from Tiflis, is that right, that is the junction, [165] isn't it? A. Yes.

Q. From Tiflis up to Moses Lake?

A. Yes.

Q. And what are those branches?

Mr. Lutterman: What branches?

Q. (Continuing): I don't mean branches, I mean stations.

A. Goodrich, McDonald and Seiler.

Q. And you have spur tracks at each one of these stations?

A. We have side tracks for loading and operational use.

Q. Are there some industries at Goodrich?

A. Yes.

Q. And they have tracks to their industries, do they? A. Yes.

Q. How long are those tracks?

A. Well, there is a double ended track that will hold about forty-five cars and a stub track that will hold about twelve cars.

Mr. Lutterman: If the Court please, I don't like to seem to go against your Honor's ruling, but it

(Testimony of Curtis E. Crippen.)

seems to me again that we are getting far afield if we are talking about tracks miles different and at different stations. [166]

The Court: Well, we have already talked about these places so we might as well hear the whole story about them. By the way, are Goodrich and McDonald between Moses Lake and Seiler?

The Witness: Yes, sir.

The Court: In that order?

The Witness: Goodrich is the closest to Moses Lake. McDonald is between Goodrich and Seiler.

The Court: I see.

Mr. Lutterman: I believe the map, the big railroad map which we introduced was deficient in that respect. I meant to make a point of that.

The Court: Yes, they are not listed on this N.P. map.

Mr. Krier: The only one that is shown is Seiler.

The Court: That is right. Seiler is shown but the two in between, Goodrich and McDonald, are not there. Go ahead, excuse me.

Q. Now, then, at McDonald you have side tracks or other tracks right off your main line, do you not?

A. Yes.

Q. How many do you have there?

A. You are speaking of McDonald?

Q. Yes, I am.

A. There are two tracks there also. One will hold [167] about twenty-four cars; the other will hold about, oh, ten cars, probably.

Q. Do they extend away from the main line,

(Testimony of Curtis E. Crippen.)

that is, perpendicular to your main line, or are they parallel to it?

A. Their general direction is parallel to the main track.

Q. And, you say, hold about twenty-four cars?

A. Yes.

Q. That is all of them?

A. No, one of them at McDonald will hold about twenty-four cars and one will hold about ten cars.

Q. The one that will hold about twenty-four cars, I suppose that is about twelve hundred feet long?

A. Roughly speaking.

Q. Now, then, you have some perpendicular tracks leading away from the main line through that area, do you not?

A. We have a track taking off between Seiler and McDonald.

Q. And where does that go to?

A. It goes to the U & I Sugar Company plant.

Q. And how long is that track?

A. Oh, probably three and one-half miles.

Q. That goes up to the U & I Sugar Company?

A. Yes. [168]

Q. There is a Northern Pacific track that leads into that sugar company, too, isn't there?

A. Yes.

Q. Do you know where that comes from?

A. From Wheeler.

Q. Do you know how long that track is?

A. No. I would judge maybe a mile and a half, some such thing as that.

(Testimony of Curtis E. Crippen.)

Q. Do you know when the sugar plant track was put in?

A. I am not too familiar with the details, but I think in 1952, some of it in 1953.

Q. That track is presently being used to serve the sugar plant, is it not?           A. Yes.

Mr. Krier: That is all.

The Court: I believe that is all, Mr. Crippen; step aside.

Mr. Lutterman: May I have just a minute?

The Court: Yes.

### Redirect Examination

By Mr. Lutterman:

Q. Of course, I think the exhibit which you say you will bring tomorrow will show, but the track distances which you said, the projected track into 13, included the track [169] within 13 itself, isn't that correct?

A. Yes, that is right, included the eleven thousand-foot track, which I mentioned, included to a point on the south edge of Section 13 at "B," the point where the blue track now terminates.

Q. In other words, it came down to where the blue track is shown now on the south boundary of almost the middle of Section 13?

A. Yes, that is right.

Mr. Lutterman: That is all, thank you.

The Court: I think that is all.

(Testimony of Curtis E. Crippen.)

Mr. Krier: Just a moment, Mr. Crippen, please.

The Court: One last question from lawyers are famous, Mr. Crippen.

The Witness: And numerous sometimes.

#### Recross-Examination

By Mr. Krier:

Q. Mr. Crippen, where would that track enter Section 13 which you would project off the end of your Milwaukee track as shown on Exhibit 4?

A. There are numerous possibilities. The one that I had specifically in mind when I mentioned eleven thousand-foot track would take off somewhere in the vicinity of here and would follow around somewhat of this character and come [170] down in this manner.

Q. Now, then, when you say "that," we have got to put that in the record. That would come off of the track marked green?

A. It would come off of the Milwaukee Road ownership within the City of Moses Lake at the end of our present main track.

Q. Supposing you put a "C" with this pencil on Exhibit 4.

The Court: Wait a minute. We have got a "C." Don't you think you had better use a different letter?

Mr. Krier: Yes.

Q. (Continuing): What is your first name, Mr. Crippen?      A. Curtis.

(Testimony of Curtis E. Crippen.)

Mr. Krier: Will the double C be all right, your Honor?

The Court: All right.

Q. All right, put—

The Court: "C-1."

Q. (Continuing): Put "C-1." That will do it.

The Court: Why don't you have him draw a broken line running—

Mr. Krier. All right.

Q. (Continuing): Starting at the point marked "C-2," Mr. Crippen, now then, draw that line across there as it would [171] go into Section 13.

A. That is one of several possibilities.

Q. I see. Now, how long do you say that is?

A. Approximately eleven thousand feet.

Q. Now then, Mr. Crippen, did you say that you could run a track up to Section 13 on five thousand feet?

A. Yes, it is possible to develop one between five and six thousand feet into Section 13, less favorable from the standpoint of grades.

Q. It is what please?

A. Less favorable from the standpoint of grades than the one I have sketched on the drawing.

Q. And the one that you have sketched is a two per cent grade, didn't you say so?

A. The maximum grade in the line would be two per cent.

Q. Have you made any investigation as to classification, the possibility of getting into it, the

(Testimony of Curtis E. Crippen.)

amount of cuts you'd have to make and that kind of thing?      A. Yes.

Q. You have done that?      A. Yes?

Q. And what would be the cost of such a line?

A. Oh, something under a hundred thousand.

Q. Mr. Crippen, when did you make this study that [172] you resulted in this projected line?

A. December, 1953; January, 1954.

Q. That is about the time this lawsuit was started, isn't it?      A. That is right.

Q. Is that the reason that you made this survey?

A. That is right.

Q. On account of this lawsuit?

A. That was one of the considerations.

Q. What was the other?

A. There had been no indication of a desire to develop any trackage up in that area before and our curiosity—didn't know whether it would be feasible or practical to develop such lines—prompted us to make the investigation.

Q. I see. And would you like to get up there and serve that territory?

Mr. Lutterman: Just a minute, if the Court please, it seems to me that the question is objectionable whether we'd like to or not. It seems to me it is immaterial.

The Court: I don't know if that is this gentleman's field or not, is it?

Mr. Krier: Well, that may be true that it isn't this gentleman's field. I don't know that though.

(Testimony of Curtis E. Crippen.)

The Court: I don't know it either, but I just question it. Maybe I am wrong.

Q. Well, you are also the General Manager, are you not? A. Yes.

Q. And do you—you have charge of the operations of all the trains and railroads of the Milwaukee in this area? A. Yes.

Q. And do you know whether or not it is the desire of the Milwaukee Railroad to make this projection of track into Section 13?

A. It is not now evidenced that there is a need for constructing such line and it is not the intent or purpose of the Railroad at this time to project such a line. If there is a need for industrial trackage we would undertake to influence those who are interested to locate close to existing facilities on the available trackage and property that is available. If a concrete need that was economically justified called for a track to Section 13, then serious consideration would be given it.

Q. With the idea of building it, you say, serious consideration would be given to the idea of building the track?

A. If the need developed and the economic justification were there, we would then give serious consideration to the construction of such a track.

Q. And if there were industries located upon Section [174] 13 in what is marked as Farm Unit No. 71, why then you'd like to build a track up there, would you not, if it were economically feasible?

(Testimony of Curtis E. Crippen.)

A. It would depend on the magnitude of the thing, the economic justification of the thing and so forth.

Q. Well, if there was economic justification would you like to build a track up there then?

A. If there were enough to justify it then we would definitely give serious consideration to the construction.

Q. With the idea of building a track?

A. That is right.

Mr. Krier: That is all.

#### Further Redirect Examination

By Mr. Lutterman:

Q. Since they have mentioned the route in, Mr. Crippen, could you hurriedly sketch in the shorter route into Section 13 that you had in mind?

A. I will label the second shorter route "C-2" for identification. The first longer route was labeled "C-1" for identification.

Mr. Lutterman: That is all, thank you Mr. Crippen.

The Court: I believe that is all Mr. Crippen, thank you?

Mr. Lutterman: May it please the Court, that is our [175] case.

The Court: Very well. Defendant proceed.

Mr. Krier: You requested some maps from us?

Mr. Lutterman: That is right. I thought they wouldn't be here until tomorrow.

Mr. Krier: No, they have been here but I didn't want to interrupt Mr. Crippen.

Mr. Lutterman: This would be—we might as well go on 11.

The Clerk: This will be 12.

Mr. Lutterman: 12, that is right.

The Court: What is 12?

The Clerk: A map.

The Court: What is it?

Mr. Lutterman: This map showing the proposed trackage development in 13. I take it if I would be permitted I assume I should identify it with a witness.

Mr. Eastman: Let the record show that it is a map, that Mr. Lutterman requested Mr. Derrig to furnish yesterday when he was on the stand.

The Court: That would be a N.P. map of some contemplated track that was considered for this area?

Mr. Eastman: In Section 13.

The Court: Yes.

Mr. Lutterman: May I just see it? [176]

(Plaintiff's Exhibit number 12 marked for identification and admitted in evidence.)

Mr. Krier: May the Court please, I think unless your Honor would prefer it, that we will not make an opening statement. It is quite apparent to us that you have got the issues well in hand, even before the case even got started, and I think the testimony will probably——

(Testimony of Curtis E. Crippen.)

The Court: I don't think it is necessary but you are free to make it if you wish.

Mr. Krier: No, if you don't think it is necessary.

The Court: All right, go ahead.

### WALTER RAY ADAMS

being first duly sworn on oath, was called as a witness on behalf of the Defendant and testified as follows:

#### Direct Examination

By Mr. Krier:

The Clerk: State your full name and spell your last name.

The Witness: Walter Ray Adams, A-d-a-m-s.

Q. Mr. Adams, by whom are you employed?

A. Northern Pacific.

Q. How long have you been employed by the Northern Pacific?

A. Since 1905 with the exception of two winters at college.

Q. First I should have asked you, where do you live?      A. Seattle.

Q. All right. Now then go ahead. How long have you worked for the Northern Pacific?

A. Since 1905 with the exception of two winters at college.

Q. And in what capacity?

A. In the Engineering Department as chain man, road man, instrument man, assistant engineer and division engineer.

Mr. Krier: Now then, if your Honor please, we

(Testimony of Walter Ray Adams.)

have two maps here that have been taken from—that we got from [178] the Bureau of Reclamation and we have got them both certified and it takes the two of them together to show the entire area that we would like to display to the Court.

The Court: Do you want to do that now?

Mr. Krier: We'd like to offer these certified maps as exhibits. Would you like to see them, Mr. Lutterman?

Mr. Lutterman: I wouldn't know. I will ask Mr. Sedgwick.

The Court: Well, all you need to consider now is authenticity. Obviously if they are duly certified——

Mr. Lutterman: I will accept counsel's statement that these are certified by the Bureau on maps and that they are—I will accept counsel's statement for that.

The Court: Very well.

The Court: Offered and admitted. Want the number now?

Mr. Krier: I don't know——

The Clerk: Mark them separately or together?

Mr. Krier: Better mark them separately. Do you want to continue the numbering on through?

The Clerk: No. We will put an "A" in front of them, A-1, A-2 and so on.

Mr. Krier. Fine.

The Clerk: Make any difference which one is 1?

Mr. Krier: I don't think it makes a bit of difference. [179]

(Testimony of Walter Ray Adams.)

The Court: Would you mind stating what they are Mr. Krier?

Mr. Krier: Yes. These are topography maps of the original Columbia Basin project in the State of Washington, topography of Township 19, Range 29 W.M. which are now on file in the office of the Bureau of Reclamation at Ephrata, Washington.

The Court: What area? How do they tie in with the areas that we have previously been talking about?

Mr. Krier: Well now then, roughly the township line is right here (indicating).

The Court: Going down the center of Exhibit 4?

Mr. Krier: That is right. We will make a record on this.

The Court: Maybe I am getting ahead of myself. Go ahead and put it in the way you want to.

The Clerk: Defendant's Exhibits A-1 and A-2 have been marked for identification and admitted.

(Defendant's Exhibits number A-1 and A-2 marked for identification and admitted in evidence.)

Mr. Krier: Will you hand those to Mr. Adams please? The Judge admitted them?

The Clerk: Yes, they are. [180]

The Court: Do you have to have both of them at the same time, Mr. Krier? Would you like to take a little time now and get them tacked up?

Mr. Krier: Well, I'll tell you, I had something else in mind. We have another one which is put

(Testimony of Walter Ray Adams.)

together which will be easier, but Mr. Adams has put other marks on it and in order to qualify this base map we had this one certified exactly the way it comes from the Bureau of Reclamation.

Q. I will ask the witness what they are?

A. This is a topographical map of Township 19 North, Range 29 East and the other one would be 28 East.

Q. Now then, you are familiar with that map, are you Mr. Adams?           A. Yes, sir.

Q. And you looked it over?

A. I have looked it over in the field.

Q. I see, all right. Now then——

Mr. Krier: Will you hand him the other one Colonel, please?

A. This is the same kind of a map topographical map and the—but it is for the Township or the Range just west of the one that was previously introduced.

Q. All right. Now then——

Mr. Krier: Would you mark that one, [181] please?

The Clerk: Defendant's Exhibit A-3 has been marked for identification.

(Defendant's Exhibit A-3 marked for identification.)

Mr. Krier: Hand it to the witness please.

Q. Now Mr. Adams, I am handing you Defendant's Exhibit A-3 and ask you what that is?

A. This is an exact duplicate of Exhibits A-1 and

(Testimony of Walter Ray Adams.)

A-2 put together, joined together to show them—the lay of the land as it—as you explained before, the section line between these two ranges. They are joined so they lay right together the way it should be on the ground.

Q. All right, that is a combination then of Exhibits A-1 and A-2?      A. A-1 and A-2.

Q. And you, you put some additional marks——

A. I put some additional information on this. The first, A-1 and A-2, showed the Northern Pacific and the Milwaukee tracks and these have been emphasized so that it will be just a little bit easier to see, and I have also put on this map the Sugar Company tracks. Here is the line we have just emphasized, the Northern Pacific, and here is the Milwaukee over here which is emphasized (indicating) so you can see them plainer. No change made.

But then from then on there is some little changes which [182] I will explain.

Q. All right.

A. One is the tracks leading from the Northern Pacific, the track leading from the Northern Pacific at Wheeler to the Utah and Idaho Sugar Company and also from the Utah and Idaho Sugar Company property to the Milwaukee connection, at least part of it as far as can be shown in this township.

And another change is the Moses Lake Municipal Airport as shown and the United States Bureau of Reclamation Experimental Farm is shown in Section 13 which we have been talking—has been talked about in this case. Also, the proposed Northern

(Testimony of Walter Ray Adams.)

Pacific track running from near Wheeler over to serve Section 13 which is three and nine-tenths miles long. Also,—that is shown in red. Also there is shown on this map the 1948 proposed, the projection of the N.P. Railway tracks that was proposed in 1948 a little further to the north, and that is shown in dashed red and starts off a mile above the proposed track to the Section 13, swings to the west and down the gully and connects into the Milwaukee track at Moses Lake.

Q. Are there any other additions or changes on the map besides the ones you have mentioned?

A. Well, the mileposts have been put on on the Northern Pacific track for just identification of location. [183]

Q. All right.

A. Otherwise I don't think there have been any changes made at all.

Mr. Krier: Would you like to see the map, counsel?

Mr. Lutterman: Yes, if you are going to offer it.

Mr. Krier: Yes, we are going to offer it.

The Court: It is merely a combination of 1 and 2, so—

Mr. Lutterman: It isn't that I am interested in, it is what he has put on that I want to take a look at.

I think in order not to slow down the proceedings I would just simply like to make this statement that we won't object except that I do not admit

(Testimony of Walter Ray Adams.)

the materiality of all matters shown including the Sugar Company track.

The Court: Yes, I understand your position in that regard. The exhibit will be admitted over your objection.

(Defendant's Exhibit number A-3 admitted in evidence.)

Mr. Krier: Put it on the easel now.

A. I might further explain that the scale of this map is a thousand feet to the inch and the contour intervals are two feet. That is from each, one contour to the next is two foot difference in elevation.

Q. Does that appear as a legend on the map itself?

A. Yes, but I don't think it appears that the heavy [184] contour lines are ten foot apart.

Q. I am not sure.

A. I am not sure that appears on there.

Q. There is a difference in the shading of the contour lines as shown on Exhibit A-3?

A. They are exactly the same on this map as on A-1 and A-2.

Q. Well, there is a difference in shading though as shown?

A. Yes, on all the maps there is a little difference in the weight of the lines.

Q. Now if the line is heavier that means there is a ten foot contour?      A. Ten foot contour.

Q. And light line two foot contour?

A. Yes.

(Testimony of Walter Ray Adams.)

Q. Does—is that shown in the legend on the map?

A. I don't know whether it is shown on the legend of the map.

Q. How do you know that to be a fact?

A. They are numbered.

The Court: Count the lines I imagine?

The Witness: Pardon?

Q. Count the lines in between?

A. Yes, each line is numbered the elevation of the, the [185] elevation of it is numbered on the map.

Q. There are some places on the map that the actual elevation of that contour is shown on the map?      A. Yes.

Q. So that you can look at a contour up on Section 13 and one down at Moses Lake and get the difference in elevation?      A. Yes, sir.

Q. All right.

Mr. Krier: Mark this one.

The Clerk: Defendant's Exhibit A-4 has been marked for identification.

(Defendant's Exhibit number A-4 marked for identification.)

Q. Just before we get to this next exhibit, may I refer your attention to Exhibit A-3. Do you mind stepping down to look at it please, and tell us what the contour is of the center of Section 13 as shown on Exhibit A-3?

A. The elevation of the center of Section 13 is

(Testimony of Walter Ray Adams.)

approximately half way between elevation eleven ninety-two and eleven ninety-four, which would make it eleven ninety-three.

Q. All right. That is eleven ninety-three is the elevation there?      A. Yes, sir.

Q. And now then tell us what the elevation is at the [186] center of Moses Lake? Now wait, let's see. We have got to get it a little more right than that. As shown on the—well at the northwest section corner of Section 23—well, there is a bench mark indicated here at the northwest corner of Section 23 which is ten ninety-eight point twenty-six?

A. Yes, sir.

Q. Now then, does that ground fall away to the east of that point?

A. Yes, to the west of it it falls away.

Q. Well, it falls away from there into the lake, doesn't it?

A. Yes, but that is up on the hill a little bit.

Q. Now then, what is the contour on that same section line there of the north boundary of Section 23 at the quarter corner?

A. Ten fifty-two twenty-four. There is also a bench on that quarter corner.

Q. What is that again please?

A. Ten fifty-two twenty-four. A bench mark is an established elevation with the known elevation right down to the gnat's eyebrow.

Q. I see, that is to the gnat's eyebrow when you say bench mark. That is one put in by the United States Government?      A. Yes. [187]

(Testimony of Walter Ray Adams.)

Q. Is that the Coast Geodetic Survey?

A. I think it is the Bureau of Survey.

Q. Now if you will resume the stand please, Mr. Adams.

Now I am handing you what has been marked as Defendant's Exhibit A-4 and ask you what that is?

A. This is a profile of the section lines from near the Northern Pacific Continental Northern track over across the plateau and down the bluff to the Moses Lake area. One line, profile "AA" is taken on the—a mile north of Section 13.

Q. Well now, let's see if we can—where does it start, Mr. Adams?

(Whereupon, the witness approached the map, Exhibit A-3.)

A. This is Section 13. The profile if it is marked "AA" is taken a mile north of that from—

Q. Now let's—can you refer to it by section so that we can have a positive identification in the record?

A. North of Section 8.

Q. Better refer to the township and range because we have got two of them.

A. North of Section 7 and 8 in Township 19, Range 29 and north of Section 12 in Range 28, both the same township.

Q. All right, that is line "AA" as shown on Exhibit A-4.

The Court: Another way of saying the same

(Testimony of Walter Ray Adams.)

thing [188] would be approximately along the line of that 1948 proposed track.

The Witness: Well, near to it.

Q. Nearest section line to that? A. Yes.

Q. All right. Now then, what is the next line down?

A. The next line "BB" is taken approximately along the proposed Northern Pacific track.

The Court: Present proposed?

The Witness: Yes, and clear through 29, Range 29 and over into Range 28.

Q. That is taken on the section line, is it?

A. On the section line and the profile "CC" is just a mile south of that taken from Wheeler across and down to Moses Lake.

Q. Now Mr. Adams, you can take the stand if you please. Take the exhibit with you.

What is the scale that this Exhibit 4 is drawn on?

A. This is drawn on an exaggerated scale.

Q. Will you explain to the Court what the scale is?

A. The horizontal scale is one thousand foot to the inch and the vertical scale is fifty feet to the inch.

Q. Now then, did you work out some percentage of grades or falls on these lines?

A. Yes sir. [189]

Q. Will you tell us what they are, please?

A. I think I will pretty near have to put that up on the board.

(Testimony of Walter Ray Adams.)

Q. Maybe we had better put it up. You can cover this one for a while.

The Court: Has this been admitted yet?

Mr. Krier: No. We will offer it, your Honor.

The Court: This A-4 is offered.

Mr. Krier: This is a copy of it.

Mr. Lutterman: I don't admit the materiality, but—

The Court: Same admitted with the same ruling.

(Defendant's Exhibit number A-4 admitted in evidence.)

The Court: Is this likely to take any length of time? If it is I suggest we do it at recess and come back and have it all done. We don't want to stand while all this computation goes on.

Mr. Krier: All right, your Honor, I think that will be better.

The Court: Yes. We will let you do that at the recess time. You can tell us what it is now, give us the oral part of the testimony and you can mark it in at recess and counsel can watch.

Q. Mr. Adams, what is the per cent of grade as shown on line "AA" in Exhibit A-4? [190]

A. In this general location a line somewhat similar to that would be a thirteen per cent grade.

Q. All right. Now then, what is the grade on line "BB" as shown on Exhibit A-4?

A. Line approximately across in this direction would be a five and one-half per cent grade.

(Testimony of Walter Ray Adams.)

Q. That is a line which you will put on during recess?

A. Those are the two lines that I will put on.

Q. All right. Now then, what is the grade on line "CC" as shown on Exhibit A-4?

A. The grade on line "CC" as shown on the exhibit is right down the County Road and it is a four per cent grade.

Mr. Lutterman: I missed that. Was that "CC" was four per cent?

The Witness: Four per cent, yes.

Q. All right, you may resume the stand now.

The Clerk: Defendant's Exhibit A-5 has been marked for identification.

(Defendant's Exhibit number A-5 marked for identification.)

Q. Now then, Mr. Adams, I am handing you what has been marked as Exhibit A-5 for identification and ask you what that is?

A. This the same identical map as A-4 with——

Q. Is it A-1 and A-2? [191]

A. A-1 and A-2.

Q. All right.

A. With the Northern Pacific and Milwaukee lines brought out a little bit heavier and the proposed track to serve Section 13 shown in red.

Q. I notice that you have some circles put on that map with numbers on the inside. What are they?

A. Some photographs were taken at these par-

(Testimony of Walter Ray Adams.)

ticular locations where the circles are marked. The number inside of the circle is—well, the center of the circle is the location that the pictures were taken from and the pictures were numbered 1-1, 1-2, 1-3, 1-4, 1-5 and 1-6, and 2-1, 2-2, 2-3, 2-4, 2-5 and 2-6 and so on up.

Q. The number on the inside of the circle is the first number shown on the picture?

A. Is the first number shown on the picture.

Q. And the second number shown on the picture is what?

A. Is outside the circle and it indicates the, in general, the line upon which the picture, the camera was pointed when the picture was taken, so 1-1 would—the picture that is numbered 1-1 as indicated on this map would be taken at, from the center of the circle 1 and pointed in the angle line shown on the other 1, the second 1.

Q. Now Mr. Adams, were you present when these pictures were taken? [192]

A. I was present when all of these pictures were taken.

Q. And you made the notes on this map, the circles, that is?

A. I recorded the notes in my notebook and made the notes on the circle on the map or had them done under my supervision and checked them personally to see that they were correct.

Q. All right. Who took the pictures, Mr. Adams?

A. Mr. Zwang.

(Testimony of Walter Ray Adams.)

Q. And you were present when each of these pictures was taken?

A. I was there, yes sir.

Mr. Krier: If your Honor please, by the way of a little explanation, we have some pictures of the area there and in order to keep accurate, some kind of an accurate count on what the pictures show, we made this what we call an index map and that is what——

The Court: I see that that is apparently the purpose of it. The only additional material on this A-5, Mr. Adams, is the location of where the photographs were taken, is that right?

The Witness: Except the location of the proposed track.

Q. Oh, isn't that on? [193]

A. That is on there, yes, that is the only additional, but all of that isn't on there. Everything that is on the other map isn't on here.

The Court: I understand that, but the only added material that we don't have on the others are circles indicating the photographs taken?

The Witness: Correct.

The Court: I have it in mind.

Mr. Krier: I will tell you what we could do.

The Court: Why can't you put that same stuff back on A-4 and have it all in one?

Mr. Krier: Just what I was going to suggest.

The Court: You have my permission to do that at a recess or whenever you prefer. You won't need to make any further identification. Mr. Adams can

(Testimony of Walter Ray Adams.)

transpose the material relating to the photographs now appearing on offered 5 onto 4. We will have it all in one piece and one less paper to fool with.

Mr. Krier: You may cross-examine.

### Cross-Examination

By Mr. Lutterman:

Q. This one elevation you spoke of at eleven ninety-three, I couldn't see from back here. Did you mark that on Exhibit No. 3? [194]

A. No, I didn't. It is indicated on center of Section 13.

Q. Well, let's—

Mr. Lutterman: I wonder if we could have that?

The Court: Now you are not going to need the profile thing.

Mr. Lutterman: Maybe I will cross-examine him on that.

The Court: Let's dispose of that before we take it off and put it back on again, unless there is some point in it or—

Mr. Lutterman: No, I think that was a good suggestion, your Honor.

Q. This profile line "AA" is just simply a section line profile? A. Yes, sir.

Q. And which section line with reference to the 1948 proposed track shown on Exhibit A-3 is it, the section line north or south?

A. Just south of it.

Q. South. And so of course it doesn't represent

(Testimony of Walter Ray Adams.)

a grade of any track or anything, it just simply represents the grade along that particular section line?  
A. Yes, sir; yes, sir.

Q. The "CC" of course, is an actual grade, is the grade [195] of the road itself?

A. Yes sir.

Q. In other words, it is an existing road which has been graded into that grade?  
A. Yes, sir.

Q. And you are speaking in each case, of course, I take it of the maximum grade?

A. Well, there is only one place the grade is shown.

Q. Well, as I take it if this is a condensed profile which I take it it is, isn't it, what we ordinarily would refer to as a condensed profile of a line?

A. No, not necessarily, no.

Q. Well, I take it that this, that this line I am talking about now, "CC," represents the grade of the Wheeler Road from Wheeler into Moses Lake?

A. Yes.

Q. That is correct?  
A. Yes.

Q. And there is not, as I see the map, there is not a constant grade on the road is there?

A. No.

Q. The grade varies?

A. The grade varies, yes.

Q. So what were you referring to by the four per cent, the maximum grade? [196]

A. Where it goes down the hill.

Q. Well, that is what I mean.

The Court: As I understood that the figures

(Testimony of Walter Ray Adams.)

that he gave on those percentages were the steepest place in the profile, is that right?

The Witness: Yes, that is right.

Mr. Lutterman. I think that is all I have on that.

Q. One question about "BB." That doesn't even show the grade for the present proposed track?

A. It is quite close to it because—but it don't show only where the track would be along the section line.

Q. The maximum grade there is five and one-half per cent? A. Not on the track, no?

Q. On "BB"?' A. On "BB," yes.

Q. That is all. Now on A-3 you pointed out a high spot I think of eleven ninety-three. Do I have my figures correct?

A. Yes, sir, right in the middle of Section 13.

Q. High of eleven ninety-three. Is that the highest point in that section? A. No, sir.

Q. You are just simply giving the elevation at the [197] center of the section?

A. The quarter corner, center quarter corner.

Q. That is what I mean, the center of 13?

A. Yes.

Q. The other elevation you gave was ten ninety-six? Now where did you locate that?

A. Ten ninety-six wasn't it?

Q. I may be wrong. Ten ninety-eight point twenty-six?

A. Yes, ten ninety-eight point twenty-six. That is the northwest corner of Section 23.

Q. Which is almost on the shore of Moses Lake?

(Testimony of Walter Ray Adams.)

A. No, sir; no, sir.

Q. Well, it is downtown. Where did you point there?

A. Right at the quarter corner, right here (indicating).

The Court: Right by the depot, isn't it?

The Witness: No.

The Court: It says depot on the map right there, on this other map.

The Witness: Well, the depot is quite a little bit lower down than that.

Q. And of course as shown by these contours there may be a place where there would be something which you might call just a deep hole, isn't that about it? For instance, as indicated in portions of—any of these lands in 13, 14, 23 where your contours are close together and circled it would indicate [198] it was pretty much in the nature of a hole?

A. Where they are close together in circles it would indicate either a hole or a hill.

Q. That is correct, but for instance where they are going down, that is the numbers going towards the center are going down, why of course it shows a hole?      A. A hole, yes, sir.

Mr. Lutterman: That is all.

The Court: I believe that is all, Mr. Adams. Call your next please.

Mr. Krier: I think that is it. We will call Mr. Zwang. [199]

LARRY W. ZWANG

being first duly sworn on oath, was called as a witness on behalf of the Defendant and testified as follows:

Direct Examination

By Mr. Krier:

The Clerk: State your full name and spell your last name.

The Witness: Larry W. Zwang, Z-w-a-n-g.

Mr. Krier: May it please the Court, we have a lot of pictures to mark here.

The Court: Why don't we take the afternoon recess at this time and you folks can enjoy the recess by marking all those exhibits and then we will get that all done at that time. It will be a little easier because you can talk more freely.

Mr. Krier: Thank you, thank you. I was going to suggest that too.

(Whereupon, at two-twenty-five o'clock p.m. a recess was had until three-five o'clock p.m., at which time respective counsel being present, witness Larry W. Zwang resumed the witness stand for continued direct examination by Mr. Krier and the following proceedings were had, to wit:)

Mr. Krier: If the Court please, we ran into a [200] little difficulty. Mr. Adams explains that it is going to take him probably pretty close to an hour to draw these trans—transfer these circles and indexes.

(Testimony of Larry W. Zwang.)

The Court: Can't he do it tonight?

Mr. Krier: Yes, with your premission he will be glad to.

The Court: Certainly. You may remove the exhibit for that purpose tonight and it will be more convenient for him to work where he has a proper board and all the rest of it.

Mr. Krier: All right.

Q. Will you state your name?

A. Larry W. Zwang.

Q. Have you been sworn? A. Yes.

The Clerk: During the recess Defendant's Exhibits A-6 to A-21, both numbers inclusive were marked for identification.

(Defendant's Exhibits number A-6 to A-21 inclusive marked for identification.)

Mr. Lutterman: All photographs?

The Clerk: Yes, they were.

Mr. Krier: A-6 to 21?

The Clerk: Yes, both numbers inclusive. [201]

Q. Now where do you live, Mr. Zwang?

A. I live in Seattle.

Q. And by whom are you employed?

A. The Northern Pacific Railway Company.

Q. And how long have you been employed by the Northern Pacific?

A. Approximately four and one-half years.

Q. And in what capacity?

A. As a Claim Agent.

(Testimony of Larry W. Zwang.)

Q. Now as a Claim Agent do you have occasion to take pictures?           A. Yes, sir; I do.

Q. Is that part of your duties?

A. Yes, it is.

Q. Now, did you at my request go over to the vicinity of Wheeler, Washington, and take some pictures?           A. Yes, I did.

Q. And who was with you when you did it?

A. Mr. Walter Adams.

Mr. Krier: Just hand them all. If your Honor please, I don't believe A-5 has been admitted as an exhibit yet, but we will offer it.

The Court: Yes, with the proviso that the material on it is to be put on A-4, is that right?

Mr. Krier: That is right. [202]

The Court: Yes, it is admitted.

(Defendant's Exhibit number A-5 admitted in evidence.)

Q. Now, Mr. Zwang, I refer you to Exhibit marked A-6 and ask you what that is? Just turn the flap down, you will see the number. By the way, about when were these photographs taken?

A. These photographs were taken on February 17th of this year.

Q. Of 1954?

A. Yes, sir. Photograph A-6 is a panorama, a series of photographs numbered from left to right 1-1, 1-2 and 1-3. They are photographs taken—may I use the map?

(Testimony of Larry W. Zwang.)

Q. Yes, I wish you would. If you will refer to Exhibit A-5. If you will stand on this side.

The Court: You will have to speak a little louder if you are facing away because it is hard for the Reporter to hear.

A. Exhibit A-6, this series of photographs numbered 1 to 3 inclusive is taken from this point which is about two hundred fifty feet south of the Wheeler highway.

Mr. Lutterman: Does that have a number or name?

Mr. Krier: Yes it does. We will catch it in a minute.

Q. That is a point numbered 1 inside the circle as [203] shown on Exhibit 5?

A. Yes, sir. And with the projecting lines 1, 2 and 3 extending generally south to west. These outside numbers correspond with the numbers on the pictures and for instance the picture 1-1 which would be looking generally south.

Q. Now picture 1-1, the first 1 refers to the number inside the circle?

A. Yes it does.

Q. And the second number refers to the number outside the circle? Outside the circle?

A. That is right.

Q. All right.

Mr. Krier: We have an extra one of these, your Honor.

The Court: I will just step down near you if

(Testimony of Larry W. Zwang.)

you don't mind, and take a look. Yes, I see. Go ahead.

Q. All right. Now——

The Court: Let me see the one he just referred to.

Q. (Continuing): Referring to the next one, I believe it would be A-7?      A. A-7.

Q. All right. Now tell us what that is?

A. This is a picture that is taken from the same location numbered 1-4 through number 1-6 inclusive. This photograph is taken looking from west to north showing Wheeler in [204] the center photograph.

Q. All right. Now let's refer to the next one please. Refer to the exhibit and call it by number.

A. Exhibit A-8, a panorama of three photographs numbered 2-1 to 2-3 inclusive which are taken from the same location as shown on A-5 which is looking generally north to generally east.

Q. Now then, were those taken from the level of the ground or from a high place?

A. No, sir, the photographs from this location were all taken from the top of a waste bank of fill from the canal running through there.

Q. All right. Now then, refer to the next one please.

A. Exhibit A-9 is a panorama of photographs number 2-4 through 2-6 which are taken looking generally east to south from the same location shown on Exhibit A-5. Number 2-4 looks generally east with number 2-6 looking generally south. They are also taken from the top of this waste fill.

(Testimony of Larry W. Zwang.)

Q. All right. Now then refer to the next.

A. Exhibit number A-10 is a series of four photographs numbered 3-1 through 3-4 inclusive. This photograph is taken from point, the point of intersection of the Northern Pacific proposed—

Q. Now just a minute, Mr. Zwang. That is taken from the point marked 4 inside the circle on Exhibit 5? [205]

A. This one is taken from the point marked 3 inside the circle on Exhibit A-5.

Q. All right. That is Exhibit—what are you referring to now?

Mr. Lutterman: I am a little confused. Is it inside the circle number 3 or number 3 inside a certain circle?

The Witness: The number 3 designating where this photograph is taken is numbered inside the circle.

Mr. Lutterman: Yes, but does that circle itself have a number? That is what I am getting at.

The Witness: No, the circle itself wouldn't have a number. Merely the number inside the circle designates this photograph.

Mr. Krier: There are two numbers inside each circle, Mr. Lutterman.

Mr. Lutterman: I see that is 3 and 4, that circle.

The Witness: Yes.

Mr. Lutterman: I see.

A. This A-10 is taken from the point of intersection of the Northern Pacific proposed spur which is numbered 3 with the numbers of these photo-

(Testimony of Larry W. Zwang.)

graphs 3-1 looking generally southeast toward Wheeler and showing Wheeler, and it is a panorama covering the area in this direction with number 3.

Q. What direction is "this direction"? [206]

A. This direction, circular (indicating).

Q. That is west?

A. Southeast to west generally with photograph 3-4 looking generally east and directly—excuse me. Directly west down the proposed spur, proposed track. The photograph shows the sugar factory in photograph 3-2.

Q. All right. Refer to the next one now.

A. Exhibit A-11 is taken from the same location with photographs 3-5 and 3-6. Photograph 3-5 looks generally northwest with 3-6 looking generally northwest, straight northwest on our Continental Northern line.

Exhibit A-12 is a photograph taken from the same point of intersection as shown by number 4 within the circle at the point of intersection of the Connell Northern line and the proposed spur, these photographs being numbered 4-1 through 4-3, inclusive.

Photograph number 4-1 looks generally northwest from the point marked 4 down the Continental Northern line and with 4-3 looking generally east from the same point.

Exhibit No. A-13, a series of three photographs numbered 4-4 through 4-6 as indicated by figure 4 within the circle at the same point. These photographs are taken with number 4-6 looking generally

(Testimony of Larry W. Zwang.)

southeast showing Wheeler and 4-4 showing directly east. Exhibit No. A-14, a panorama of photographs numbered 5-1 through 5-3 which is taken from [207] the center line of the proposed Northern Pacific track at station 129 plus 6-4 which is located by the circle on the proposed line, numbered 5 within the circle, taken from the top of the canal bank looking east to southeast, photograph numbered 5-1 looking east. This photograph also shows the center line of the proposed track at that point.

Photograph 5-3 shows the sugar factory in the distance.

Exhibit No. A-15, photographs 5-4 through 5-6, inclusive, is taken from the same point looking generally east.

Q. What is the circle point, Mr. Zwang?

A. Point number 5, excuse me.

Q. All right.

A. Looking northeast to northwest. Exhibit No. A-16 numbered—photographs numbered 6-1 through 6-3 is a panorama taken from the point numbered figure 6 on the center line of our proposed track taken looking—photograph 6-1, looking generally south, showing the airport, and photograph 6-3, looking west on the proposed Northern Pacific track.

Exhibit No. A-17, photographs numbered 6-4 through 6-6, is a panorama taken from the point shown in figure 6 within the circle on the map, looking generally west to north.

Exhibit No. 18, A-18, panorama of photographs, numbered 7-1 through 7-3, is taken from a point

(Testimony of Larry W. Zwang.)

marked 7 within [208] a circle which is located six hundred feet east of the northwest corner of Section 13 and on the north line of Section 13. These photographs are taken looking northeast to south. They show the bluff on top of which the proposed spur is to be built.

Exhibit A-19 is two photographs, 8-1 and 8-2, a small panorama taken from a point shown 8 within the circle taken from one-fourth mile west of the quarter corner on the north line of Section 13. These photographs are taken looking generally east to south.

Exhibit A-20, a series of three pictures, numbers 9-1 through 9-3, which were taken from a point shown by number 9 within the circle on the map which is at a point four hundred ninety-three feet west of the quarter corner on the north line of Section 13, the photographs being taken with the camera facing south to west, showing the site of Moses Lake in the photographs 9-2 through 9-3.

Exhibit A-21, a series of three pictures, numbers 10-3 through 10-1, from left to right, in that order, are taken from a point marked 10 within the circle on Exhibit A-5. These photographs are also taken from a point four hundred ninety-three feet west of the quarter corner of the north line of Section 13 taken looking generally north to west. Photograph number 10-1 shows a view directly north with 10-3 looking directly west. [209]

Q. You may resume the stand.

Mr. Krier: Haven't seen them, have you?

(Testimony of Larry W. Zwang.)

Mr. Lutterman: No. Maybe to expedite matters I will just stipulate that they may be admitted subject to cross-examination and subject to any objections as to——

The Court: I have studied them quite carefully as they were going in. I think I have what they show in mind. Are you offering them?

Mr. Krier: We will offer the pictures A-6 through A-21.

The Court: Admitted, A-6 through A-21 are admitted.

(Defendant's Exhibits number A-6 through A-21 admitted in evidence.)

Mr. Krier: You may cross-examine when you are ready, of course.

The Court: Why don't you study them this evening and have Mr. Zwang come back if you want to ask him something more about them if you find you do?

Mr. Lutterman: I wouldn't know without looking at them.

The Court: It would take you a long time. You have to orient on them and one thing and another.

Mr. Lutterman: That is satisfactory.

Mr. Krier: All right. [210]

Mr. Lutterman: I have stipulated to their admission.

The Court: I doubt if you will want—unless—if something occurs to you, you can call Mr. Zwang back. Why don't you do that?

(Testimony of Larry W. Zwang.)

Mr. Lutterman: I don't know that—I may not have anything. I may just ask one or two questions.

The Court: Just let counsel know whether he should come back or not.

Mr. Lutterman: I may ask one or two general questions.

The Court: Certainly. I am not trying to limit; I am just trying to suggest.

### Cross-Examination

By Mr. Lutterman:

Q. As I understand it, these pictures are joined to give a panorama effect; they are each a separate shot?

A. Yes, taken with a plain camera with photographs pieced together.

Q. And, of course, it would be subject to the same characteristic of any picture taken in that manner, that it would not show the perspective, that is the true perspective, of all the ground? In other words, what is in the foreground would appear larger, relatively, than what is in the background, isn't that correct? [211]

A. Well, I think it shows a very good general idea.

Q. I understand that. That is generally true of these pictures as of any picture taken at an oblique angle?

A. I presume so. I am not a professional photographer.

(Testimony of Larry W. Zwang.)

Q. Were they taken to show any particular feature or any particular thing at any one of these particular points that you mentioned?

A. Yes, sir, they were taken——

Q. Let me—I think I may have misled you. Were they—any of those pictures taken so as to accentuate any particular object or feature which appears therein?

A. They were taken to show the general level character of the land on top of the plateau to the east of Moses Lake. However, they don't accentuate anything in particular.

Q. That is what I mean. There wasn't a closeup of some particular feature or topographical or physical that you were trying to bring out in the foreground to emphasize?

A. No, no particular picture is accentuated in any way. They are just exactly what any picture at that point would show.

Mr. Lutterman: That is all the general questions I have. I may not have any other questions.

Mr. Krier: But you would like an opportunity to look them over?

Mr. Lutterman: Yes. [212]

The Court: That is all, Mr. Zwang; call your next, please.

(Witness excused). [213]

W. P. STAPLETON

being first duly sworn on oath, was called as a witness on behalf of the Defendant and testified as follows:

Direct Examination

By Mr. Eastman:

The Clerk: State your full name and spell your last name.

The Witness: W. P. Stapleton, S-t-a-p-l-e-t-o-n.

Mr. Eastman: I wonder if we could have Exhibit 11, which is the Northern Pacific map, just placed on the easel?

Q. Mr. Stapleton, where do you reside?

A. Seattle.

Q. Are you at the present time in the employ of the Northern Pacific Railway Company?

A. Yes.

Q. And in what capacity?

A. Western Agricultural Development Agent.

Q. How long have you been employed by the Railway Company?      A. Since 1924.

Q. And during all that period of time has your service been in the Agricultural Department?

A. Yes.

Q. And, successively, what positions have you held and what territory have you performed your service in? [214]

A. I was at Billings, Montana, from 1924 to 1928, at Spokane, Washington, from 1928.

Q. What was the character of your work at Billings?

(Testimony of W. P. Stapleton.)

A. At Billings I was Agricultural Development Agent for the Company.

Q. And then where next?

A. Spokane, Washington, in the same capacity, from 1928 to 1931.

Q. Now, when you were at Spokane, what territory did you operate in?

A. Everything along Northern Pacific lines, Sand Point, Idaho, and west.

Q. Then where were you next stationed?

A. Seattle, Washington, since 1931.

Q. And what has been your position there?

A. I have worked in the same capacity with a little different title. My title at Seattle is Western Agricultural Development Agent.

Q. And what is your territory? What has been your territory since you have been located at Seattle?

A. Northern Pacific lines from Sand Point, Idaho, west.

Q. Now, prior to employment by the Northern Pacific, were you engaged in agricultural work?

A. For five years I was a County Agricultural Agent [215] in Montana just prior to coming with the Northern Pacific.

Q. What are your educational qualifications in the work in which you have been engaged?

A. I was graduated from the North Dakota Agricultural College.

Q. And that is located where?

A. Fargo, North Dakota.

(Testimony of W. P. Stapleton.)

Q. Now, will you just describe briefly and generally the character of your work as an Agricultural Development Agent?

A. My work is to aid in the development of agriculture in the areas tributary to Northern Pacific line. It includes land settlement work, work having to do with the organization and management and plannings of irrigation districts, work having to do with the introduction of new types of crops and new farming methods.

Q. Now, in connection with that work, have you been familiar with the development of the several irrigation districts that have been created in the State of Washington in the past few years?

A. Yes.

Q. And what are some of those districts?

A. Well, some of the districts that have developed in the State of Washington since I came with the, came to the state, include the Kittitas Reclamation District——

Q. Where is that? [216]

A. Headquarters at Ellensburg, Washington, the Roza Irrigation Project in the Yakima Valley with headquarters at Sunnyside, Washington, and Columbia Basin Irrigation Project in central Washington.

Q. Now, in connection with your work, of course you are familiar generally with all of the territory and particularly the agricultural territory that is served by the Northern Pacific? A. Yes.

Q. Will you please refer to Exhibit No. 11 and

(Testimony of W. P. Stapleton.)

indicate generally the location of the main line of the Northern Pacific east to west in the State of Washington as shown on that exhibit? You may step down to do that.

A. This map shows the main line of Northern Pacific Railway Company running southwest of Spokane to Pasco and northwest up through the Yakima Valley and across the Cascade Mountains and into Seattle.

Q. That is the east-west main line in the State of Washington? A. Yes.

Q. Now, at a point between Pasco and Spokane, is there a branch line extending from the main line?

A. Yes, the Washington Central branch of the Northern Pacific takes out at Cheney, Washington, runs west and south to Adrian. [217]

Q. When was that branch line constructed, Mr. Stapleton?

A. Construction of that branch started in 1889. The line was built in segments and was completed in 1903.

Q. Now, was that line or another branch line connecting with it subsequently constructed in that territory?

A. Yes. As shown on this map the Connell Northern branch of the Northern Pacific Railway Company extends from Connell on the Company's main line, runs north and west through Franklin and Grant Counties to Adrian, Washington, where it connects with the Washington Central branch.

(Testimony of W. P. Stapleton.)

Q. When was that line, the construction of that line, started and when was it completed?

A. Construction of the Connell Northern branch was started in 1909. The line was finished in 1910 and the first commercial freight was handled on the line in September, 1910.

Q. You may resume the witness chair. What is the approximate length from Connell to Adrian? Connell Northern?

A. Approximately sixty-one miles.

Q. Now, what is the character, or what was the character of the area by the line at the time of its construction?

A. It was almost predominantly a wheat-producing section. There was a small volume of livestock production. All of the land was non-irrigated.

Q. And what was the purpose of the construction of the [218] line from Connell to Adrian?

Mr. Lutterman: May it please the Court, I would like to make an objection at this time. It seems to me that—I know just exactly what counsel is trying to develop now—that we are going far afield. The purpose of the line, what the particular branch lines serves, all those matters may be of interest but certainly have no relevancy with respect to the particular issue before the Court, which, in this case, is strictly a determination of the character of the track in question, and I think counsel is proceeding with an attempt to show, or his evidence apparently is attempting to go to the question of public convenience and necessity rather than the

(Testimony of W. P. Stapleton.)

simple issue here as to the character of the track in question. It seems to me we are going far afield.

The Court: I may ultimately decide that way, but for now you may make your showing.

Q. (Continuing): Well, then, after the construction of the line, what was the principal type of agriculture production in the territory for a period of time after?

A. Almost exclusively grain production with natural rainfall, and in addition to that there was a small volume of livestock production.

Q. Were there established along the line certain facilities for the handling of the grain production?

A. Yes. [219]

Q. And whereabouts were those established, that is, generally, and over what part of the branch line of the Connell Northern?

A. Well, again at Connell and extending to Wheeler there were and still are grain elevators at almost every station on the line.

Q. Now, Mr. Stapleton, I take it that in connection with your work as Agricultural Development Agent that you have become familiar with and are acquainted with the so-called Columbia Basin project? A. Yes.

Q. Would you just briefly state the character of that project?

A. Well, briefly, the Columbia Basin project is what is called a dual purpose project. It was designed to produce approximately two million kilowatts of electrical energy at Grand Coulee Dam

(Testimony of W. P. Stapleton.)

and to irrigate one million and twenty-nine thousand acres of land which includes major areas or major portions of Grant and Franklin Counties, includes sizeable acreages in western and southwestern Adams County and a small acreage in Walla Walla County.

Q. Now, the Connell Northern itself goes through a portion of that irrigation development area, does it not?      A. Yes.

Q. Now, in connection with that irrigation development, [220] were certain irrigation districts created by that project?

A. Yes. Land to be irrigated was organized into three irrigation districts for the purpose of administration. These include the Quincy Columbia Irrigation District with headquarters at Quincy, Washington; the East Columbia Basin Irrigation District, with headquarters at Othello, Washington, and the South Columbia Basin Irrigation District, with headquarters at Pasco, Washington.

Q. Now, generally, what area is included in the East Columbia Basin Irrigation District?

A. The East Columbia Basin Irrigation District includes the lands to be irrigated in the eastern portion of Grant County and some lands in Adams County.

Q. Are those Adams County lands in the southwest portion of Adams County?

A. West and southwest.

Q. Now, are the lands in the immediate vicinity

(Testimony of W. P. Stapleton.)

of the Wheeler-Moses Lake area included in the East Columbia Irrigation District?

A. Yes, except for some lands that are irrigated either by private wells or through the Moses Lake Irrigation District.

Q. As I understand, there was some small area around Moses Lake and a few areas that were irrigated by private irrigation before the Columbia Basin project developed? A. Yes. [221]

Q. Started or completed? A. Yes.

Q. And those areas, while they are within the boundaries of the district, do not actually form a part of the East Columbia Irrigation Basin district? A. That is correct.

Q. Now, is there an area in the vicinity of Wheeler which lies in more or less of a plateau above the City of Moses Lake? A. Yes.

Q. Will you bound that area for us, please?

A. Well, in general, I would bound it this way, that the plateau area that you refer to runs west four to five miles towards Wheeler, runs——

Q. West toward Wheeler from where?

A. Towards Moses Lake from Wheeler.

Q. From Wheeler?

A. Yes. Runs southeast to Rauquist on the Connell Northern, a distance of about four miles from Wheeler; runs northwest toward Gloyd, Washington, on the Connell Northern, a distance of five to six miles from Wheeler.

Q. And that area which you have just described

(Testimony of W. P. Stapleton.)

within that irrigation district is on, all on the same——

Mr. Lutterman: Just a minute. I haven't objected before on account of time, but I think you have been leading [222] this witness persistently. I object.

Mr. Eastman: From you!

The Court: Go ahead with it.

Mr. Lutterman: In the interest of time I have let you go on, but——

The Court: Go ahead with it.

Mr. Eastman: I am flabbergasted! (Laughter.)

The Court: Go ahead talking about this plateau.

Mr. Eastman: Well, I will admit that I was thrown off the track for a minute.

(Whereupon, the reporter read back the last question.)

Q. (Continuing): Would you describe generally the relationship of one part of the area that you have just described with the other with respect to the elevations?

A. I don't think I quite understand your question.

Q. Is this area that you have described comparatively level or otherwise?

A. Oh, it would class as level to very gently rolling.

Q. Now, in connection with the development of these several irrigation districts, are the irrigable

(Testimony of W. P. Stapleton.)

lands divided in any manner for the purpose of determining their agricultural development?

A. Yes; the land is divided into farm units under the provisions of the Anti-Speculation Law. The farm units average [223] about eighty acres in size but range from about two acres in size for a small number of part-time units to a maximum of a hundred sixty acres, and when I say acres, I mean acres of irrigable land.

Q. Now, what is the present stage of irrigation development in the East Columbia District?

A. First water in the East Columbia Basin Irrigation District was provided in 1952. For the year 1954 East Columbia Basin irrigation water will be available for approximately sixty thousand acres of irrigable land extending from a point north of West Warden and Connell branch of the Northern Pacific.

Q. Extending from that point where?

A. North.

Q. North?           A. Yes, north.

Q. And approximately how far north is this area that you said would be comprised of how many acres, sixty—

A. Approximately sixty thousand acres will be provided with water rights, including the land that is being provided with water this year. It extends from approximately at West Warden on the Northern Pacific to a point four to five miles north of Gloyd on the Northern Pacific.

Q. Now, where is the station of Gloyd on the

(Testimony of W. P. Stapleton.)

Connell Northern with respect to the station of Wheeler? [224]

A. The station of Gloyd on the Connell Northern is north and west of Wheeler, approximately seven to eight miles,

The Court: When did you say this next sixty thousand was coming in?

The Witness: I said, your Honor, that for the crop year 1954 the area I mentioned, water will be available for approximately sixty thousand acres of land.

Q. That will be the aggregate of the acreage under water, water development having started in 1952? A. Yes.

Q. You do not mean that sixty thousand additional acres will come in in 1954, but will be the aggregate?

A. That will be the total acreage for which water will be available.

Q. Now, as a result, Mr. Stapleton, of the irrigation development which started with the furnishing of water in 1952, has there been a different type of agricultural production in the Wheeler-Moses Lake area than there has been heretofore?

A. The type of agriculture has—irrigation has completely changed the type of agriculture in that territory. Farming with natural rainfall farms ranged from twelve to eighteen hundred acres in size. Wheat was about the only crop produced. Under irrigation the farms average about [225] eight acres in size. They are producing a wide

(Testimony of W. P. Stapleton.)

variety of crops, including sugar beets, potatoes, onions, miscellaneous vegetables, including vegetables for freezing, grain, dried peas, dried beans and forage crops, just to mention the principal crops. The climate in that territory is very well suited to the production of a wide variety of general farm crops. The yields that are being obtained are comparable to the yields produced in the best portions of the Yakima Valley.

Q. What will the ultimate acreage of—how will the ultimate irrigation acreage in the Columbia Basin project compare with that in the Yakima Valley?

A. Irrigation works that are under construction in the Columbia Basin project provide water for a million and twenty-nine thousand acres of land. In the Yakima and Kittitas Valleys combined, which is the area extending from Cle Elum on the main line of the Northern Pacific to Pasco on the main line of the Northern Pacific, the total acres of land under irrigation is approximately four hundred fifty thousand.

The Court: You say that ultimately in the Columbia Basin area there will be a million twenty-nine thousand acres under water?

The Witness: Yes.

The Court: Whereas the total combined of Kittitas and [226] Yakima four hundred fifty thousand?

The Witness: That is right.

Q. Now, does that figure that you have recited, is

(Testimony of W. P. Stapleton.)

that based upon the final completion of the Columbia Basin project which includes not only the present canal facilities but additional ones?

A. Yes, that includes the full development. That in turn includes the east high canal which is designed to irrigate approximately two hundred fifty thousand acres of land on the east fringe of the project and would include land running the entire length of the project from north to south, including land east of Wheeler.

Q. Over how many—strike that.

As a result of the irrigation development during the past two or three years, and the production resulting from that development, have there been a number of new processing and other plants established in that general area, that is, the East Columbia Basin and district area for the handling of the products? A. Yes.

Q. Will you indicate where those facilities have been established and the general character of them?

A. Barham, Washington, which is located about twelve miles southeast of Wheeler on the Schrag branch of the Connell Northern.

Q. Can you indicate for the benefit of the [227] Court where the Schrag branch——

The Court: I have got it. That is Schrag at the end of your branch there, is it, that is the end of it?

The Witness: Yes.

The Court: This town you mentioned, Barham, doesn't appear on the map.

The Witness: Barham is probably not shown on

(Testimony of W. P. Stapleton.)

that map because it is a new station and it is a non-agency station. At Barham there was located a vegetable packing shed.

The Court: Where is that? Is it between Wheeler and Schrag or——

The Witness: Five miles west of Bassett Junction, your Honor, if you can find——

The Court: Yes, I see Bassett Junction.

The Witness: Five miles west of Bassett Junction.

The Court: On the last junction?

The Witness: On the same junction.

The Court: Do you mean east or west?

The Witness: West; I beg pardon.

The Court: Five miles east?

The Witness: Yes.

Q. What is the character of that facility?

A. That is a vegetable packing shed, engaged almost exclusively, if not exclusively, in the packing of potatoes. [228]

Q. All right. What other facilities have been—first, let me inquire, is that facility served by spur track from, by the Northern Pacific?

A. Yes.

Q. What other facilities are located on or adjacent to the Northern Pacific lines in that area?

A. At Rauqust, Washington, there are two facilities, facility for packing and storing of potatoes and onions, and another facility which has just been completed for the mixing of fertilizers and the packing of potatoes and onions.

(Testimony of W. P. Stapleton.)

Q. Now, you mentioned one facility which was just completed. When was the other facility installed at that point?

A. That was—that is the house owned by the Western Cold Storage Company. I believe it was built in 1950. The other house was the J. R. Simplot Company. It has just been built and will go into operation in 1954.

Q. Are those facilities served by spur trackage?

A. Yes.

Q. From the Northern Pacific? A. Yes.

The Court: Where is that Rauquist?

Q. Will you locate that on the map?

A. Rauquist is not shown on the map either.

Mr. Lutterman: Another non-agency station?

The Witness: Rauquist is a non-agency [229] station. We account for that in the Wheeler station. Rauquist is shown on this map, your Honor. It is about six miles, about three and one-half miles southeast of Wheeler.

The Court: I see, between Wheeler and Bassett Junction there.

The Witness: Yes.

The Court: All right, go ahead.

Q. All right; now, will you proceed and name any others that are on either the Northern Pacific or the Milwaukee?

A. At Wheeler, Washington, the Columbia Bean and Elevator Company have established a facility. I believe it was built in 1952.

Mr. Lutterman: In 1952?

(Testimony of W. P. Stapleton.)

The Witness: I believe in 1952 is correct.

A. (Continuing): At Wheeler there was also located the facilities of the Odessa Trading Company, which includes a grain elevator that has existed there for a great many years. However, during the past two years the Odessa Trading Company has added two more facilities for the handling of beans, corn and fertilizer and grain.

Q. Now, are those provided with spur track facilities off of the Northern Pacific? A. Yes.

Q. Now, are there any other points on the [230] Connell Northern?

A. Mitchell's spur on the Connell Northern, which is about three miles and a half northwest of Wheeler.

Q. That is not shown on the map, is it?

The Court: It is here.

Mr. Eastman: Oh, it is?

A. And, incidentally, it has been moved. It is a little bit closer to Wheeler than the map now shows, but at that Mitchell spur a group of farmers who operate under the name of Shorts, et al., have constructed a facility for the handling of potatoes, onions, and, I believe, fertilizer.

Q. Now, in that same territory are there facilities of similar type on the Milwaukee line?

A. Well, outside of the City of Moses Lake?

Q. Yes. I mean outside of the City of Moses Lake?

A. Well, on the Moses Lake branch of the North-

(Testimony of W. P. Stapleton.)

ern Pacific there are three facilities, one at Goodrich, Washington, which I believe——

Mr. Lutterman: He said these were on the Northern Pacific. I know he'd like them there, but——

A. (Continuing): On the Moses Lake branch of the Milwaukee, beg your pardon. One was at Goodrich, Washington, I believe, about a mile and a half from Moses Lake, for the handling of potatoes and, I believe, onions. Another one is at McDonald, Washington, for the handling of vegetables, and [231] another one at Seiler, Washington, for the handling of vegetables.

Q. Now, are all of those facilities provided with spur trackage by the Milwaukee?

A. That was my understanding of it.

Mr. Lutterman: Just a minute. Unless he knows, I move that his answer be stricken.

Mr. Eastman: Well, I think the record already indicates, but if there is any question about it we are willing to have the record——

Mr. Krier: It is already testified to. Your Mr. Crippen testified to that.

Mr. Lutterman: I don't know why you should ask this man to guess about it.

The Court: Go ahead, gentlemen, go ahead.

Q. Now, in addition to the facilities that you named, are there any other facilities that have been established in the area for the handling and processing of any products raised in the area?

A. Yes, at a point about one and one-tenth miles

(Testimony of W. P. Stapleton.)

west of Wheeler and a little bit to the south; the Utah-Idaho Sugar Company constructed a large modern sugar refinery in 1953 that went into operation for the handling of the 1953 crop of sugar beets produced in that territory and in some other areas. [232]

Q. Now, is that facility served by spur trackage?

A. That facility is served by a track from Wheeler on the Northern Pacific. It is also served by a track from Seiler on the Milwaukee.

Q. What are the respective distances of the tracks which serve that facility from the two lines?

A. The Northern Pacific track is one and one-tenth miles in length figuring the distance to the Sugar Company's property, The Milwaukee track is three and four-tenths miles in length figuring the distance to the Sugar Company's property.

Q. Well, now, when you say "property," you mean the property line?      A. Property line.

Q. Now, in connection with the Milwaukee line which extends from Seiler, the distance of three and fourth-tenths miles to the property line, does that then reach the plant facility proper?

A. No, it does not.

Q. And how far away is it from there up to the sugar plant proper?

A. Seven-tenths of a mile.

Q. Seven-tenths of a mile. Now, under the present development program for furnishing of irrigation of certain areas, certain areas come under

(Testimony of W. P. Stapleton.)

irrigation each year according [233] to a Bureau schedule?      A. Yes.

Q. And is that program to extend over a period of a number of years yet?

A. Yes; the Department of the Interior established some years ago a sequence of development beginning in 1952 except for a small acreage at Pasco and extending through 1959 and the program calls for bringing under irrigation during that period approximately a half million acres of land and to date the program has been carried out on schedule.

Q. The development through 1953, that is the first two years of development, would represent approximately what proportion of the complete development for that period from '52 to '59 with respect to acreage?

A. For the whole project?

Q. No; for the project—the development that occurs from 1952 through 1959?

A. You mean that is for all areas in the Columbia Basin project?

Q. Yes.

A. Well, I will put it this way, that the program roughly calls for bringing in sixty thousand acres of land per year and that works out pretty well because beginning in 1954, which is the third year, water will be available for approximately a hundred eighty thousand acres of land in the [234] entire project.

(Testimony of W. P. Stapleton.)

Q. Well, then, this development which you have, this increased production has occurred only as a result of the completion of about a third of the development program?

A. Yes, a third of the development program running to '59.

Q. Yes.

The Court: Is that land throughout that entire area roughly of the same quality?

The Witness: It varies widely, your Honor, and for irrigation purposes is divided into three classes. Class 1, which is the top quality land; class 2, which is not so good because of either lack of range, rocks, topography, depth of soil; and class 3, which is the poorest class for the same reasons. Then there is another class of land called class 6, which is not irrigable.

Mr. Eastman: You may cross.

The Court: Cross.

#### Cross-Examination

By Mr. Lutterman:

Q. Mr. Stapleton, you sort of lost me in millions and millions and millions of acres here. You are talking about tremendous areas. You are talking not just about land that is in the area or tributary to Moses Lake, you are talking [235] about the entire Columbia Basin Irrigation Project, isn't that right, when you are throwing these figures of over a million acres?

(Testimony of W. P. Stapleton.)

A. The total figures include the entire Columbia Basin.

Q. Do——

Mr. Eastman: Let him answer the question.

A. (Continuing): The total figures represent the entire Columbia Basin project covering the area I described.

Q. Well, can you point out on the map here, this is a comparatively small scale map, the Northern Pacific Railroad map, will you point out that area generally?

A. Well, it includes major portion of Franklin County, it includes the major portion of Grant County, it includes sizeable acreages on the west edge and southwestern part of Adams County and includes a very small acreage in Walla Walla County.

Q. So that you are talking about a tremendous area in this section of the state, not just in the immediate Moses Lake area?

A. Talking about the entire Columbia Basin project.

Q. As a matter of fact, there are many trading centers already established in the entire area. For instance, the town of Othello, on the Milwaukee line? A. Yes. [236]

Q. That is in the area. The town of Warden, which is served both by the Milwaukee and the Northern Pacific? A. Yes.

Q. That is correct. And town of Beverly down here on the Milwaukee, is that correct?

(Testimony of W. P. Stapleton.)

A. Well, I think Beverly is out of irrigable area.

Q. Just on the edge of it?           A. Yes.

Q. And also we are talking about the area adjacent to the City of Ephrata?

A. In a general way. There isn't very much irrigable land close to Ephrata, but if you take into the Ephrata-Quincy territory that is——

Q. I was going to come to the town of Quincy?

A. Yes, that is right.

Q. And, of course, Ephrata aspires to be the metropolis of the Columbia Basin, too, doesn't it?

A. Well, I have no opinion on that.

Q. And, of course, the area in the Quincy-Ephrata fringe of the entire Basin project is served by the Great Northern as indicated on the map here?           A. That is right.

Q. And, as I have indicated, there are some stations which are what we call local to the mills that are served by it and some stations which are exclusive or local to the [237] Northern Pacific that they are served by and some that are joint, isn't that correct?           A. That is right.

Q. Generally speaking, with respect to the present development, the lands in the immediate area of the City of Moses Lake have already got water, haven't they, and have had it since 1952, isn't that correct?

A. Well, '52, possibly '53 on some of it but in general you are correct, the land close to Moses Lake.

(Testimony of W. P. Stapleton.)

Q. Yes, and these areas that are coming in in 1954 and some that you were describing are areas farthest south or east?

A. To the south and east.

Q. Yes, and some of them which would be down in the direction of the towns of Warden and Othello?

A. Yes. Also include, however, land immediately east of Wheeler under the east high canal.

Q. Yes; and as a matter of fact, prior—I think you stated the first water in the Moses Lake area from the Columbia Basin Irrigation Project was in 1952, is that right?

A. Yes.

Q. And really came in in 1953 and for sometime prior to that there was a substantial irrigated area in the Moses Lake area, wasn't there?

A. An area of around a thousand acres, roughly speaking. [238]

Q. And that was in the area immediately adjacent to the City of Moses Lake?

A. South and west of Moses Lake.

Q. And do you know the extent of the production from just that area?

A. It has been a very productive area.

Q. Now, you have mentioned several shipping points not only on the Northern Pacific but on the Milwaukee and have talked about tracks serving these areas. I think you mentioned that there were loading facilities at Seiler, McDonald and Goodrich on the Milwaukee, that there were tracks serving these facilities?

A. Yes.

(Testimony of W. P. Stapleton.)

Q. And these tracks are just simply——

A. If I may add, I said I understood there were spur tracks there.

Q. But you don't know that. But with respect to the tracks you spoke of serving it—well, let's get them here. You had Barham, was that right?

A. Correct.

Q. And the type of tracks serving that facility is a track practically parallel to and extending with the branch line track, isn't it?

A. That is right.

Q. It is in the immediate vicinity of your branch line? [239]

A. That is right.

Q. You might say it is alongside of your branch line track?

A. Well, it is a typical spur track built to serve an industry.

Q. Leading off of—and how close would the industry be to the branch line itself, let's take the one at Barham?

A. I am unable to answer that question.

Q. Now, you have testified that there was a facility there. How close would you say—I don't mean exactly but approximately?

A. You mean, how close the spur track would be to the main line?

Q. Yes.

A. Oh, it would be measured in hundreds of feet.

Q. In hundreds of feet? A. Yes.

(Testimony of W. P. Stapleton.)

Q. And the facility itself, that is, the warehouse, would be what? It would be adjacent to the branch line itself, wouldn't it?

A. Beyond the spur track?

Q. Yes; but it would be adjacent to the branch line itself? A. It would be close to it.

Q. Beg pardon?

A. It would be close to it. [240]

Q. Close to the branch line. Now, you mentioned there were some facilities at Rauqust. I think you said two facilities. And isn't the same thing true there?

A. Will you repeat that question again, please?

Q. I understood from your testimony that you have two facilities for—one for the packing and storing of potatoes and onions and another one for mixing of fertilizer at a non-agency station named Rauqust on your line, is that correct?

A. Right.

Q. And I also understood from your testimony that these plants are served by a track, is that right?

A. Correct.

Q. Now, this track serving these two facilities are adjacent to and for the most part parallel to the branch line itself, isn't that correct?

A. Well, one of them is practically parallel. I think the other one—well, the other one runs pretty well at right angles.

Q. But the facilities which you speak of, the warehouses, one for the potatoes and onions and

(Testimony of W. P. Stapleton.)

the other for fertilizers, are practically adjacent to the line itself, aren't they, to the branch line?

A. Close to it.

Q. Yes. And at Wheeler you say that there was, there has been existing there for some time a grain loading facility, [241] is that correct?

A. Grain elevator.

Q. Grain elevator?           A. Yes.

Q. That has been there for some time?

A. Yes.

Q. And, as I understand it, in 1952 there was some other facility installed there?

A. There was additions made to it in 1952 and 1953, I believe.

Q. And some facilities for the packing, as I take it, and shipping of beans and corn?

A. And grain and fertilizer.

Q. At Wheeler?           A. Yes.

Q. And, likewise, I understood you to say that those are served by tracks?           A. Yes.

Q. And those, likewise, are tracks extending only a short distance from the branch line itself, is that correct?           A. That is right.

Q. And the facilities themselves are located where with reference to the branch line track?

A. Are located on the spur tracks.

Q. I mean, they are close to it? [242]

A. They are close.

Q. You might say alongside of your branch line?

A. Yes, they are close to the branch line.

Q. A matter of feet, wouldn't that be correct?

(Testimony of W. P. Stapleton.)

A. Well, I assume that could be right, yes.

Q. Now, the facility at Mitchell's spur, how about that? Does that have a separate track or does that—is that served directly from the branch line track itself? A. Served by a spur track.

Q. And how far does it extend from the branch line, if you know?

A. Well, that facility at Mitchell extends away from the branch line at a fairly sharp angle.

Q. Well, now, do you know how long a track it is from—that serves it?

A. No, I do not. It is a short track.

Q. A short track?

A. Yes, it is a short track.

Q. And the facilities then is located, you might say, along the branch line itself?

A. Located at the end of the spur.

Q. But the spur isn't along the branch line, isn't that correct? A. Yes.

Q. Now, you mentioned something about the property line [243] of the Sugar Company. Do you know what—in the first place, you know, do you not, that their plant consists of two sections, number 20 and 29?

A. Well, it consists of more than two sections. I think there is about fourteen hundred acres. I don't have a map.

Q. You were talking about it. Let's find out about it. Do you know what sections are included in their plant?

(Testimony of W. P. Stapleton.)

A. There is a different map we ought to have to show it.

Mr. Krier: If you look at Exhibit 3 you will see it. That has to come down anyway (indicating easel).

Mr. Lutterman: I thought that was what we were looking at.

Mr. Krier: No; this is Exhibit 5. This is the index map.

Q. You spoke of the property lines of the U & I. Now, will you point out the property lines?

A. I can point out the south line right here (indicating).

Q. You are pointing to the south line of Section 20?      A. Yes.

Q. Well, isn't it a fact that Section 29 is also owned by and incorporated as part of the plant site of the U & I?

A. I don't have my records with me and I cannot answer that question. [244]

Q. So that—then the statement you made with respect to the distance of the Milwaukee track to the property line of the U & I may be incorrect if you do not know the property line, is that correct?

A. Well, I can't give you that property line here because I haven't got my maps with me.

Q. Well, if—

The Court: When you have finished looking at the map, please come back to the stand because we always get into that trouble of keeping track of what is going on.

(Testimony of W. P. Stapleton.)

Q. If, in fact, Section 29, in addition to Section 20, which you have pointed out as shown on Exhibit A-3, I think this is, if in addition to 20 the Sugar Company also owns 29 as part of its plant area, then your distance as to the Milwaukee line would be more than a mile off, wouldn't it?

(Whereupon, the witness approached the map.)

Q. (Continuing): Here is 29 and here is 20 (indicating).

A. My—I will go back on the stand. My understanding—

Q. Can you just answer my questions?

A. Will you restate the question?

The Court: The question is, if Section 29 is a part of U & I plant property in addition to the section above it, he says then your figure of three—

Mr. Lutterman: Four. [245]

The Court: —four, would be a mile off.

A. It would be a mile off providing the Milwaukee didn't build a mile of track in there.

Q. We are not talking about building.

The Court: The fact about it will appear, won't it? So let's not spend any more time. It is obvious this gentleman isn't sure about that.

Mr. Lutterman: We have no further questions.

The Court: Is that all with Mr. Stapleton?

Mr. Eastman: I think that is all.

(Testimony of W. P. Stapleton.)

The Court: That is fine. Mr. Stapleton, you are through for the day.

(Witness excused.)

The Court (Continuing): How are we running on schedule now?

Mr. Eastman: Well, we have four more Railway Company witnesses and then we have two outside witnesses who should be very short.

The Court: Well, the reason I inquire is that I have another matter for tomorrow that I have put over to Saturday thinking it better to do it that way than to bring you back on Saturday. I am still hopeful that we can go ahead and conclude this matter. With that number of witnesses if you use a little expediting on it we might well be able to do that then tomorrow. If not, we can give you some time [246] Friday morning.

Mr. Eastman: I think we could probably complete those witnesses tomorrow.

The Court: Would nine-thirty be agreeable to everybody again?

Mr. Eastman: Yes.

Mr. Lutterman: Yes.

The Court: Very well, we will recess now until tomorrow morning at nine-thirty.

(Whereupon, at four-thirty o'clock p.m. Court was recessed.) [247]

February 25, 1954

Mr. Krier: If your Honor please, there was some reservations for cross-examination of Mr. Zwang.

Mr. Lutterman: I have no further questions.

Mr. Krier: All right. We will call Mr. [250] Martin.

WILFRED ARTHUR MARTIN

being first duly sworn on oath, was called as a witness on behalf of the Defendant and testified as follows:

Direct Examination

By Mr. Eastman:

The Clerk: State your full name and spell your last name.

The Witness: Wilfred Arthur Martin,  
M-a-r-t-i-n.

Q. Where do you reside, Mr. Martin?

A. In our home office at Seattle.

Q. But your residence is Seattle? A. Yes.

Q. Are you here in response to a subpoena that has been served upon you? A. Yes, sir.

Q. At the present time by whom are you employed?

A. Pacific Gamble Robinson Company, doing business as Pacific Fruit and Produce Company in this territory.

Q. I beg pardon?

A. Doing business as Pacific Fruit and Produce Company in this territory.

(Testimony of Wilfred Arthur Martin.)

Q. Now, what is the business of Pacific Gamble Robinson Company generally?

A. We are wholesale purveyors of fresh fruits and vegetables and canned goods in a small way, groceries. We [251] are distributors, wholesale distributors is what we would be.

Q. Of fruits and vegetables and some canned goods? A. Right.

Q. Now, you mentioned Pacific Fruit and Produce Company, saying that Pacific Gamble Robinson was doing business as Pacific Fruit and Produce Company. Does Pacific Gamble Robinson Company do business under any other name?

A. The Pacific Gamble Robinson Company do business under that name as well as other names, yes, sir.

Q. Well, now, in the territory in Washington and Idaho and so forth, does your company do business under the name of Pacific Fruit and Produce Company? A. Yes, sir.

Q. And what area does it so use that name in?

A. As Pacific Fruit and Produce Company?

Q. Yes.

A. Well, all through Washington, Oregon, Idaho, California.

Q. Now, your company also operates in Minnesota, North and South Dakota and other points east of Montana, does it not? A. Yes, sir.

Q. And in that area generally what name does it do business under?

A. Pacific Gamble. [252]

(Testimony of Wilfred Arthur Martin.)

Q. Pacific Gamble? A. Yes.

Q. And where is the dividing line with respect to those two names, Pacific Fruit and Produce Company and Pacific Gamble Company?

A. Butte, Montana.

Q. Then west of Butte you use the name of Pacific Fruit and Produce Company? A. Right.

Q. And in the territory east of Butte, Pacific Gamble Company? A. Right.

Q. Now, in the State of Washington—strike that. How long have you been in the employ of Pacific Gamble Company? A. Three years.

Q. And what are your present duties?

A. I am supervisor of the shipping of potatoes and onions and the different vegetables that are grown in this area.

Q. Prior to joining the company what did you do, Mr. Martin?

A. I have been in the produce business all my life.

Q. And will you just relate briefly what experience you have had in connection with the produce business? [253]

A. Well, I was in—my father was in the potato and onion business, in the shipping end of it when I was a boy.

Q. And where was that?

A. In the Yakima Valley. And I worked, of course, for him. Then I opened up a jobbing house in Seattle and operated in Seattle as a jobber and

(Testimony of Wilfred Arthur Martin.)

then after that went into the brokerage business handling all fresh fruits and vegetables.

Q. That jobbing business in Seattle had to do with fruits and vegetables? A. Yes, sir.

Q. So that you have been in that business for a number of years? A. Right.

Q. Now, in connection with your work for Pacific Fruit and Produce Company, are you familiar with the company's operations generally in this northwest territory and particularly in the State of Washington? A. Yes, sir.

Q. Where in the State of Washington does your company have plants for the distribution of vegetables and fruit?

A. We have a place at Thrall. That is just outside of Ellensburg. Then we have one at Wapato.

Q. Where is Wapato with relation to Yakima?

A. About twelve miles south and east of [254] Yakima.

Q. Now, what are the characters of those two operations, Mr. Martin?

A. Well, our Wapato house is the larger and we use it as a—we have storage facilities there to store potatoes and onions. We have sorting equipment there where we pack potatoes and onions. We load cars out of there and do a general shipping business out of there.

Q. Now, in addition to those two plants, do you have other distribution facilities in the State of Washington?

A. Yes, sir; we have another one down at Sunny-

(Testimony of Wilfred Arthur Martin.)

side and then one down at North Prosser and, of course, we have the one at Ellensburg, and they are all operated practically the same. However, we don't have storage facilities in any of the places except at the Thrall place and our warehouse at Wapato.

Q. Now, those facilities that you have just described are generally used for the gathering and storage of products in that area and the distribution from those plants? A. That is right.

Q. In addition to those do you have other facilities in the State of Washington where you receive inbound shipments of other types of fruits and vegetables and canned goods and make distribution throughout the territory?

A. We have our jobbing houses in, start in Bellingham, Mt. Vernon, Everett, Seattle, Port Angeles, Bremerton, Tacoma, [255] Yakima, Ellensburg, Cle Elum, Wenatchee, Spokane, Pasco. I think I have all the branches in Washington.

Q. And at those plants you ship vegetable produce from other points in the country together with certain items of canned goods and distribute them from those points? A. That is right.

Q. Now, I will ask you, Mr. Martin, whether you are familiar generally with the irrigation development that has occurred in what is known as the Columbia Basin area? A. Yes, sir.

Q. And are you particularly familiar with the development in that area during the past two or three years in the Wheeler-Moses Lake territory?

A. Yes, sir.

(Testimony of Wilfred Arthur Martin.)

Q. During that period of time has your company investigated the possibility of locating warehouse facilities in that area?

A. Yes, we have.

Q. Have you personally had anything to do with that?

A. Yes, I have been on the team that has investigated that part.

Q. Is it the desire of your company to locate distribution facilities in that area? A. Yes, it is.

Q. Would you explain briefly the character of operation [256] which you have in mind?

A. We are planning on putting up a warehouse for, right now it would be used for processing of potatoes and onions in the Wheeler-Moses Lake area. We would have this operation now as a shipping branch, what we would call a shipping branch where we would bring in the potatoes and onions, sort them and load them out in cars and ship them in all different directions. We'd also have storage facilities there and we would in time, we believe that we would probably put a jobbing branch with our operation in the shipping so that it would be all one building.

Q. In other words, you would, your plans contemplate the expansion to handle the jobbing and distribution as well as the—that is, of fruits and vegetables that you would bring in as well as the storage and distribution of products grown in that area? A. That is right.

(Testimony of Wilfred Arthur Martin.)

Q. And do I understand that that operation would be under one roof?

A. That is what we are planning on, yes, sir.

Q. Now, in connection with that proposed operation, as I understand, you have investigated and studied various sites in that area?

A. Yes, sir.

Q. Are you familiar with lands of the Northern Pacific [257] Railway Company, which are located in Section 13 some two or three miles west of the Northern Pacific station at Wheeler?

A. Yes, sir. We have been over that property and—

Q. And have your people and you been in conference and negotiation with the Northern Pacific with respect to the possibility of locating on that area?

A. Yes, we have. We had thought that if the Northern Pacific got trackage in there that we would locate our building there.

Q. Well, now, is that the plan of your company and has it determined upon that site providing trackage facilities are available to locate their facility there? A. That is our plan.

Q. And would it be the type of operation which you have described? A. Yes, sir.

Q. Now, in connection with the location of a distribution plant of the type you have described, is it desirable that you be located within a city or at an area outside?

A. We feel that it would be beneficial to us to

(Testimony of Wilfred Arthur Martin.)

be outside as we would have more room to expand. Our operation is going to have to have a lot of room. We figured that probably we'd have to have at least ten acres of land and on Section 13. While we have made no definite deal, we thought that we would be able to obtain the land there and have what [258] we though would be the best for us to start on.

Mr. Lutterman: If the Court please, I don't like to interrupt, but so that there is no question as to our position in the matter, I would like to place a general objection to this line of testimony at this time.

The Court: Very well.

Mr. Lutterman: Because it seems to me that this evidence, if it goes to anything, it goes to the question of convenience and necessity which certainly is not an issue in this case.

The Court: Well, I can see how that might be argued, but we will let the testimony go in subject to your objection. You made your position, you need not repeat it any further, not for me. If you want to repeat it you may, but for my benefit I have it in mind.

Q. Now, what is the reason—can you state briefly the reasons why you desire a location of that size, Mr. Martin?

A. We will need a building there that we figure on having storage facilities there and we will also figure on running potatoes and onions and, for instance, we figure on loading ten, twelve, fifteen cars a day which will take some room. We will start out,

(Testimony of Wilfred Arthur Martin.)

as I said, in the shipping business first. If we have the room there we will be able to add on and put our jobbing house under the same roof. We will have to have plenty of room for—to accommodate the trucks that [259] haul in their produce. We will have to have a box lot and it just takes a lot of room for an operation of that kind.

Q. Now, in connection with the local distribution of products from that facility, a large part of that distribution is made by truck, is it not?

A. That is right.

Q. And then, of course, what about the inbound handling of the produce from the area, the surrounding territory, how will that move into your plant?

A. That will all come in by trucks, that is, the territory within, right in the very vicinity will all be hauled in by trucks. The farmers will bring that in.

Q. So you have to have ample room in the area for handling of trucks with respect to both inbound and outbound movements? A. That is right.

Q. What about parking facilities?

A. You will naturally have to have parking facilities. I have seen as high as twenty-five trucks lined up in the fall to be unloaded, and there has to be room; there has to be room for the help to park their cars. It just takes a lot of room.

Q. Now, in connection with the jobbing and distribution, what territory would that plant serve?

A. We would serve, oh, probably a radius of—I am just [260] speaking generally, we have a place

(Testimony of Wilfred Arthur Martin.)

in Wenatchee, but we probably would go seventy-five mile radius.

Q. In other words, your distribution of, local distribution of products, fruits, vegetables and canned goods, would not be limited to the retail outlets in Moses Lake? A. Oh, no, sir, no, sir.

Q. It would include any distribution that you make within a radius of fifty or seventy-five miles of the plant? A. Right.

Mr. Lutterman: If the Court please, I certainly don't like to interrupt and perhaps it isn't too material, but I do believe, Mr. Eastman, that you are leading this witness in almost every question. It seems to me you could let him testify instead of just——

The Court: I don't think there is——

Mr. Eastman: Probably fallen into a bad habit.

The Court: Go ahead.

Mr. Lutterman: You have outdone me on that, I'll say that.

The Court: Go ahead, gentlemen, go ahead.

Mr. Eastman: I simply repeated what the witness had said.

The Court: That is all right. I am following very closely so if there is any offense in it I will notice it.

Mr. Eastman: I will try to avoid it, your [261] Honor.

Q. Now, you said, Mr. Martin, that you have no definite deal with the Northern Pacific with respect to the location of your plant on Section 13, but I

(Testimony of Wilfred Arthur Martin.)

will ask you to state whether or not you anticipate whether there will be any difficulty in making arrangements with the Northern Pacific for the land that you will require?

A. We had thought that we would build a building this year over there, but we have, as we had chosen our site to go on Section 13, but we have been unable to do anything about it, so the thing has just been laying that way. We figure that if you people get a spur in there that we will have no trouble in consummating a deal and start our building.

Q. Have you desired to wait until trackage is assured before you actually——

A. That is why we have not——

Q. Constructed?

A. (Continuing): ——constructed any building over there yet. We feel that that is just about the spot where we would like to be as the potatoes and onions are grown, most of them are grown east of the Lake and we think that that would be a better spot for us to be. As now, why it makes a difference when you buy potatoes or onions to a farmer how far he hauls them, and we think that that would be quite centrally located and would have more chance of getting [262] the farmers to haul their potatoes and onions into this warehouse located in that section.

Q. Now, in connection with the handling of your potatoes and onions, when do those normally come

(Testimony of Wilfred Arthur Martin.)

into your plant in that area, when would they normally come into your plant?

A. That depends entirely upon the weather. However, we feel that it would start at least by the 10th to the 15th of August. Then that would be the beginning and then we are still drawing potatoes and onions out of the Lake area at the present time.

Q. Do you think it is possible to establish your facilities, construct your building to handle a 1954 crop?

A. I rather doubt it now. I rather doubt it, that we will be able to. After all, you have to get started in this thing early. For instance, it won't be long until the growers will be wanting to plant and you have to have facilities to take care of seed and fertilizer and so forth and I doubt if we would get started this year. It just depends.

Mr. Lutterman: If the Court please, I don't want to seem obnoxious, but it seems—I want to make a further objection. It seems to me that this line of evidence now apparently is an attempt to go to the issue of damages, as I take it. Certainly I can't see any—— [263]

Mr. Eastman: That is not the purpose of it.

Mr. Lutterman: Certainly not relevant to the issue here.

The Court: Well, we are almost over the matter now so let's not be too particular about that sort of thing. We will get the whole picture and I will weed the wheat from the chaff, or at least I will try to when we get to the end of it.

(Testimony of Wilfred Arthur Martin.)

Q. Now, in connection with the handling of the products is it necessary that you have any additional labor when the produce comes into your plant?

A. We will have to have quite a little labor and for that reason in the Moses Lake area help, the kind of help that we need is not too abundant. We figure that it will be quite a problem to keep help there, so we figured that if we are out of town and in the growing vicinity there are always farmers that—they will harvest their crop and then in the wintertime they can't do any farm work and you can pick up a lot of that farm labor. That is better, we think, than the labor that you will get in a town.

Q. Do you use that type of help in connection with some of your other operations?

A. Yes, sir, we try to get that kind of help in all of our shipping houses.

Mr. Eastman: You may cross. [264]

### Cross-Examination

By Mr. Lutterman:

Q. I take it, Mr. Martin, that you are acquainted with Mr. Nowlin in your organization?

A. Yes, sir.

Q. And he is your superior, is that not correct?

A. Yes, sir.

Q. Do you know whether or not he has still, or that he has had negotiations with the Milwaukee with reference to locating a plant in that same area, the Moses Lake area?

(Testimony of Wilfred Arthur Martin.)

A. We have spent quite a little time trying to find a place over there, that is right.

Q. And do you know that as recently as after the first of this year that he has had conversations with Milwaukee representatives concerning the location of such a plant?

A. I don't know. I don't know about that.

Q. You haven't had any conversations?

A. No, no.

Q. And you don't know whether or not he has had any conversations?

A. All I know is that the man who I report to, who is the Division Manager, spent a good deal of time with me while I was over in Moses Lake through the month of October and at that time he was very, very anxious to get a building [265] started over there and we had decided then that this property that the Northern Pacific have, Section 13 there, would be the place for us to erect our building, and—

Q. Incidentally, the Section 13 is of course, while it is outside of the city limits, you have been there on the ground yourself personally so you are familiar with it?      A. Yes, sir.

Q. And you are aware of the fact then that while it is technically outside of the corporate city limits of Moses Lake it is right next to the city limits?      A. That is right.

Q. You understand that?      A. Yes.

Q. And isn't it a fact, Mr. Martin, then that one of the considerations in connection with the

(Testimony of Wilfred Arthur Martin.)

location in that area is that while it is not in the city center, it is adjacent to or nearby the trading center of the City of Moses Lake?

A. Well, it may be some time, but it isn't right now.

Q. I mean wouldn't that be one of the considerations in locating in that area?

A. In Section 13?

Q. Yes, or in any area immediately adjacent to the City of Moses Lake? [266]

A. At the present time it is all open there. There is a lot of farming all the way around there, lots of room, and—

The Court: What he means though, is it desirable in that business to be somewhere near a city? Isn't that what you are getting at?

Mr. Lutterman: Yes.

The Court: In other words, would you put it right out in the middle of nowhere, or would you rather have it reasonably close to a town or city?

A. In our operation it doesn't—we would rather be outside a little bit. If you will notice, we have our big operation at the present time in Wapato. That is twelve miles from the City of Yakima. There is less congestion and we just feel that that would, that that is a better—

Q. I understand, Mr. Martin, that you do not wish to be in the, right in the city center, but I am speaking of—you want to locate near at least a populated center such as Moses Lake or some other town?

(Testimony of Wilfred Arthur Martin.)

A. I wouldn't say that that would be too necessary.

Q. Then you are familiar with that entire area, are you?      A. Yes.

Q. Well then, for instance for your purposes a plant at Wheeler would be just as desirable, is that correct? [267]

A. We don't think it would be because the better potatoes and onions are not grown at Wheeler.

Q. Well, you are only by road a matter of three miles from that area, aren't you?

A. We have farmers that will not haul an extra three miles to get to our warehouse.

Q. In other words, you feel that your operation would be limited to a producing area within three miles of your warehouse?

A. No, I don't mean that at all. What I mean is that an extra three miles does make a difference to a farmer when he is hauling his potatoes or onions or whatever it is to your place, and we—now I am not a specialist, I am just in the produce business, but we figure that of all the properties that we have looked at this property that the Northern Pacific has would be the most likely to fit our needs.

Q. In other words, it is then a strategic location in as far as you are concerned?      A. Yes.

Q. The location?      A. Yes.

Q. It isn't merely the fact that it is land?

A. Well, that is one of the factors.

Q. And as a matter of fact a very substantial

(Testimony of Wilfred Arthur Martin.)

portion [268] of potato production area is actually south of Moses Lake, isn't that correct?

A. There are potatoes grown all around it, that is right.

Q. And the oldest and present biggest producing area is sort of south and east of the city, isn't it?

A. Well, it is east, yes.

Q. And somewhat south, that is this area you are familiar with, U.S. 10, in here (indicating)?

A. Yes.

Q. This area lying south?

A. That is an older district there though and you see, the potato industry now has gotten so that they don't raise potatoes on land too long. They change, you know, and the farther east is actually the way the deal is going.

Q. Well actually, Wheeler is farthest east, farther east than Moses Lake, isn't it?

A. Yes, but it just seems that that land up there is not too—we have not found too many good potatoes right up in that district.

The Court: Mr. Martin, then as I understand it according to your testimony, the only reason that you prefer this N.P. tract to a tract over by Wheeler is purely a matter of proximity to the producer, is that right?

The Witness: Yes. [269]

Q. But as I am getting at, I understood you to say the big production is east, is that correct?

A. That is right.

(Testimony of Wilfred Arthur Martin.)

Q. Well then, actually Wheeler would be closer to the coming producing area?

A. If that were in a good district, yes.

Q. So that actually at Wheeler you would actually be closer to the new producing area?

A. If they had the land there that would be right, which they don't have, we think.

Q. Now, you are familiar also with the N.P. crossing where it crosses Highway 10 east of Moses Lake? I think they call that their station Rauquist. Are you familiar with that area, too?

A. Where is it now?

The Court: Rauquist, where the N.P. line crosses U.S. 10 south of Moses—or east of Moses Lake?

A. Yes.

Q. And have you considered that area?

A. We have, but we haven't—we didn't figure that we would like it there.

Q. Insofar as your distribution phase of your business is concerned, it would be important, would it not, to be fairly close to a trading center such as Moses Lake? A. Yes. [270]

Q. And as a matter of fact in a matter of quite a few miles in that immediate vicinity Moses Lake is the only trading center of any consequence, isn't that right? A. Yes, sir.

Q. So in that respect at least it would be important to be nearer to Moses Lake?

A. (Nods head.)

The Court: Did you answer?

A. Yes, sir.

(Testimony of Wilfred Arthur Martin.)

The Court: When you nod your head I don't get it, but you may have spoken and I didn't hear it.

Have you concluded now?

Mr. Lutterman: Just a minute.

Q. I asked you in connection with the past, of Mr. Nowlin in your organization. Would he have something to say about the final decision as to location?

A. I really don't think that his say there would be over the Division Manager. However, I would stand to be corrected on that. I wouldn't want to say. I report directly to the Division Manager.

Q. In other words—but you yourself would not make the final decision?      A. No.

Q. Insofar as you are concerned Mr. Nowlin would be your superior? [271]

A. I think that—I have nothing to do with him at all. He has the property and so forth. All I am is just the—I supervise the buying.

Q. He is a superior officer in your company, to you?

Mr. Eastman: Just a minute. I object. That is repetitious. He asked the question three times.

The Court: I don't think the witness has ever directly answered it. Is Mr. Nowlin your superior?

The Witness: I have nothing to do with Mr. Nowlin.

The Court: Different line of authority?

The Witness: I mean it is a different branch of the organization entirely. I have nothing to do—

(Testimony of Wilfred Arthur Martin.)

Q. I understand that, but he is, let us say, an officer of the company, is that correct?

A. I actually don't know.

Q. You are not an officer?

A. I am not an officer.

Q. But actually he holds a superior position in your company, isn't that correct?

A. I imagine. I actually don't know.

The Court: It is fully covered now. That is enough of that. Let's go on to something else.

Q. By the way, did you purchase any potatoes in the Moses Lake area last year?

A. Yes, sir. [272]

Q. And where were they located?

A. We loaded them at McDonald siding, Mitchell, Moses Lake, Quincy and all the loading stations.

Q. And all of those that you speak of are substantially from the town of Moses Lake itself?

A. That is right.

Mr. Lutterman: That is all.

The Court: Any further?

Mr. Eastman: That is all.

The Court: That is all, Mr. Martin, you may be excused now as far as the Court is concerned. Will you call your next, please?

Mr. Eastman: Mr. Watson.

(Witness excused.) [273]

HAL L. WATSON

being first duly sworn on oath, was called as a witness on behalf of the Defendant and testified as follows:

Direct Examination

By Mr. Eastman:

The Clerk: State your full name and spell your last name.

The Witness: Hal L. Watson, W-a-t-s-o-n.

Q. Where do you reside, Mr. Watson?

A. Seattle, Washington.

Q. Are you here today in response to a subpoena that has been served upon you? A. I am.

Q. At the present time who are you employed by?

A. Pacific Gamble Robinson Company doing business as Pacific Fruit and Produce Company and Gamble Robinson Company.

Q. What is your position with the Pacific Gamble Robinson Company?

A. I am Secretary and General Traffic Manager.

Q. With headquarters at Seattle?

A. At Seattle.

Q. You are an officer then of the corporation?

A. Yes.

Q. How long have you been in the employ of Pacific Gamble Robinson? [274]

A. Twenty-eight years.

Q. And during that period of time what generally have been your duties?

(Testimony of Hal L. Watson.)

A. I have had complete supervision of traffic and transportation problems.

Q. And how long have you been Secretary of the corporation?

A. I have been Secretary for four years and six years previous to that I was Assistant Secretary.

Q. Prior to joining the Pacific Gamble Robinson Company were you in a business that had to do with traffic?

A. I was with the railroad twelve years previous to joining the Pacific Gamble Robinson Company.

Q. Were you present in the courtroom when Mr. Martin testified this morning?      A. I was.

Q. Did you hear his testimony with respect to the plans of your company to locate facilities in the Moses Lake area?      A. I did.

Q. Have you had anything to do with that matter, or do you know what the plans of your company are with that respect?

A. I have sat in on several conferences pertaining to this arrangement. [275]

Q. Can you confirm the statements that have been made by Mr. Martin with respect to the plans of your company to locate in the Northern Pacific area which has been designated as Section 13?

A. I do.

Mr. Lutterman: If the Court please, I would object.

The Court: I'd just as soon have it that way. It will save a lot of time. You can cross-examine about it. No use of him repeating down the line.

(Testimony of Hal L. Watson.)

Q. Would you explain—I asked Mr. Martin to explain generally the character of your company's operations throughout the northwest. Would you explain a little more in detail the character of your company's operations and the different facilities in the territory it operates in, Mr. Watson?

A. Well, principally we are engaged in the wholesale distribution of fresh fruits and vegetables and a very limited grocery line, canned goods, flour, etc., and we are also engaged in the shipping of fresh fruits and vegetables to our various jobbing branches throughout the country, both the United States and Canada, and also to some outside connections, that is to receivers outside of our own organization.

We maintain jobbing branches at principal points and cities in the State of Washington and also shipping branches at Ellensburg and Thrall and Yakima and Wapato, [276] Sunnyside, North Prosser.

Q. Now, your operations at Pasco, for example, are of what character?

A. Pasco is a jobbing branch as we refer to it, engaged in the wholesale distribution in the surrounding territory of fresh fruits and vegetables and limited grocery lines that we handle.

Q. Now, at Yakima, that is, in Yakima city proper, what is the character of your operation?

A. We have two operations in Yakima. One is the jobbing branch engaged in wholesale distribution of fresh fruits and vegetables and grocery line

(Testimony of Hal L. Watson.)

and also we have a warehouse in Yakima proper for the storage and distribution of the soft fruits and apples.

Q. Then in addition you have, as I understood from Mr. Martin, an operation at Wapato?

A. That is correct.

Q. Are most of your facilities in the Pacific Northwest states except, that is in Washington, Idaho and Montana, except those that are located exclusively on the Great Northern served by the Northern Pacific?

A. Well, that would be, probably, taking it all in all, yes.

Q. Particularly your operation at Pasco is served by the Northern Pacific? [277]

A. That is correct.

Q. And at Yakima?           A. Yes.

Q. And——

Mr. Lutterman: As I say, if the Court please, I didn't want to be obnoxious, but it seems to me here certainly they are going strictly into the question of convenience and necessity whether this——

The Court: It may be, but it can be covered in a moment. You have got a continuing objection to it and I have the point very much in mind.

Mr. Lutterman: Thank you.

The Court: I am thinking about it all the time, so if you can quickly make a record, why make it.

Mr. Lutterman: Thank you.

Q. (Continuing): And what about Seattle and Tacoma?

(Testimony of Hal L. Watson.)

A. Seattle and Tacoma are both located on Northern Pacific tracks.

Q. Now, in connection with your operations at Yakima and Pacific County, do you have a substantial volume of inbound shipments that come to those plants for distribution?

A. Yes, we do, considerable.

Q. By rail? A. That is correct.

Q. And what does that consist of and from what [278] territory do those inbound shipments come?

A. It consists of fresh fruits and vegetables from California, Arizona, Oregon, Washington, Idaho, Colorado, Florida, Texas, Maine and practically all shipping areas that produce fresh fruits and vegetables that are not raised in the State of Washington.

Q. Are there provisions in the rates and tariffs, rail rates and tariffs which permit you to partially unload inbound carload shipments at more than one distribution point?

A. Yes, we have stopping in transit provisions.

Q. Do you frequently use that in connection with your inbound shipments to any of those plants in Washington?

A. We use that to a great extent.

Q. At what points particularly?

A. At practically all points.

Q. For example, could you partially unload a car at Pasco and then move it on to Yakima to complete unloading?

(Testimony of Hal L. Watson.)

A. That is done constantly.

Q. Now, if you were located on the Northern Pacific in the Columbia Basin territory in connection with similar inbound shipments, could you partially unload a car say at Wheeler or through the station of Wheeler and also at Pasco and Yakima under existing rates and arrangements?

A. Yes, we could. That would be very elastic privilege. [279] It is at the present time.

Q. Now, if you were located in the City of Moses Lake and served only on the Milwaukee, would you be able to partially unload shipments at Moses Lake and say Pasco or Yakima?

A. No, we could not, not at the present time.

Q. Why not? A. Rates do not permit it.

Q. That privilege is not accorded from one line to the other, is that correct?

A. That is generally correct.

Q. Now, is there any advantage to your company in connection with shipments that might be going from one of your plants to another in being on the same railroad?

A. We just recognize that one line service is generally superior to two or more. No interchange is necessary either at some junction point or at final destination where you have an extra switch service performed.

Q. Could you give an example of how that would operate?

A. Well for example, moving from Moses Lake to Seattle we are on Northern Pacific tracks. That

(Testimony of Hal L. Watson.)

would require the switching of the car from the break-up yard of the Milwaukee to the Northern Pacific. The Northern Pacific in turn, into our plant. Or at points, for example, where you would be moving from the present line at Moses Lake going to points on other lines to the Northern Pacific, for example, east of [280] Spokane, it would require service into Spokane and thence Northern Pacific from Spokane and the possibilities would be that your service is not comparable with the one line service.

Q. Now, at the present time do you make distribution or make shipments of potatoes and onions and other vegetables to the Vancouver, British Columbia, area? A. We do.

Q. I will ask you to state whether or not there would be any advantage to you under the present rates in having Northern Pacific service from the Columbia Basin territory over the Milwaukee service?

A. There are no through rates to Vancouver in connection with the Milwaukee from Moses Lake.

Q. Is there any difference in the rate from Wheeler, for example, than from Moses Lake to Vancouver? A. Yes, there is.

Q. And which rate is lower?

A. The Northern Pacific is lower.

Q. Now, in connection with Mr. Martin's testimony with respect to the distribution in the, of inbound shipments in the local area over there, what

(Testimony of Hal L. Watson.)

area would that distribution plant serve, Mr. Watson?

A. We would generally consider that practicability of a jobbing house to take care of a radius from fifty to seventy-five miles for delivery service. In other words, we [281] make delivery to the retail trade with our own equipment and our own trucks from these jobbing houses.

Q. Well now, in connection with the handling of the local production in the facility which you and Mr. Martin have described and in connection with the handling of inbound shipments for jobbing and distribution, have you made some estimate of the possible carload tonnage that would be handled in and out of your plant?      A. We did.

Q. You have made that estimate based upon your experience and the type of operation that your company planned?

A. There were several of us who are familiar with that sort of an operation that jointly made a survey of that.

Q. Could you give us an estimate of what annual tonnage you figure would move in and out of that type of an operation?

The Court: Got it by cars or tonnage or what?

The Witness: By cars.

A. Outbound potatoes and onions, our estimate would be in the beginning or the first year, for example, around seventy cars to Montana, approximately a hundred cars to North Dakota, South Dakota, a hundred thirty to Minnesota, Wisconsin

(Testimony of Hal L. Watson.)

and points east thereof and a hundred to what we call west coast points or west of the mountains, Seattle and adjacent territory.

Q. Coast points? [282]

A. That is correct. Now, on the inbound movement it is a little difficult to make an exact estimate, but in compiling these figures we have done the best we could and we arrive at fresh fruits and vegetables, for example, from Texas and Florida would be approximately twenty-five cars and approximately seventy-five from California and Arizona. Now, as to groceries and canned goods, there would be approximately fifteen cars from Minnesota and Wisconsin which would include numerous commodities, twenty from Florida and twenty from California and Oregon with the greater number coming from California, greatest per cent from California.

Q. Now, in connection with your existing operations throughout this territory, do you have types, that type of shipments both inbound and outbound to your several plants?

A. Well, I don't understand the question.

Q. In connection with your present operations you have the type of shipments that you have just discussed here that now move inbound and outbound to your existing plants?

A. That is correct.

Q. And as Traffic Manager are you generally familiar with the volume and type of that movement?

A. That is correct.

Q. And this estimate is based upon your knowl-

(Testimony of Hal L. Watson.)

edge of the present movement and your experience in connection with that type of movement? [283]

A. That is correct.

Mr. Eastman: You may inquire.

Mr. Lutterman: No questions, thank you.

The Court: That is all, Mr. Watson. Thank you. You are excused as far as the Court is concerned. You are privileged to remain, of course, like any other citizen even in the produce business can remain if you wish.

(Witness excused.)

Another witness?

Mr. Eastman: If the Court please, if the Court plans on a recess, morning recess, it might expedite the presentation of the next witness' testimony if I had two or three minutes.

The Court: Very well. Glad to do that. We will take the morning recess now.

(Whereupon, at ten-thirty o'clock a.m. a recess was had until ten-fifty o'clock a.m. at which time respective counsel being present, the following proceedings were had, to wit.) [284]

P. D. EDGELL

being first duly sworn on oath, was called as a witness on behalf of the Defendant and testified as follows:

Direct Examination

By Mr. Eastman:

The Clerk: State your full name and spell your last name.

The Witness: P. D. Edgell.

Q. Where do you reside, Mr. Edgell?

A. Seattle.

Q. You are in the employ of the Northern Pacific Railway Company? A. Yes, sir.

Q. In what capacity?

A. Assistant Vice President Timber and Western Lands.

Q. How long have you been in the employ of the Northern Pacific? A. Thirty years.

Q. Thirty years. That is since 1924?

A. Since 1924.

Q. Prior to joining the Northern Pacific what was the character of your employment?

A. Student.

Q. What was your—well strike that. What is the character of your work and has been with the Northern Pacific during your course of [285] employment?

A. I have been employed by the Land Department. I am working with land and timber. The last nine years I have been in charge of the timber and western lands.

(Testimony of P. D. Edgell.)

Q. Now, just describe generally a little more in detail the character of your duties and what they involve, Mr. Edgell?

A. Well, I manage the lands other than industrial lands, that is land grant lands west of Livingston, Montana.

Q. That includes all of the timberlands and other lands other than industrial or right-of-way properties owned by the Railway Company?

A. Yes, sir.

Q. What educational background do you have in connection with the services that you perform for the Railway Company particularly with respect to the timberlands?

A. I took some forestry in school. My main course was mechanical engineering. I have been in the field since I started with the company up until the last ten or twelve years.

Q. How long have you been in charge of the western office of the Northern Pacific that has to do with the administration of its land?

A. Nine years.

Q. And how long have you been assistant Vice President Timber and Western Lands?

A. About six months. [286]

Q. Prior to that time what was your title?

A. Western Land Agent.

Q. Were your duties as Western Land Agent similar to the duties that you now have?

A. Yes, sir.

Q. Mr. Edgell, are you familiar generally with

(Testimony of P. D. Edgell.)

the Columbia Basin project irrigation development?

A. Yes, sir.

Q. Were you present in the courtroom when Mr. Stapleton testified?

A. Yes, sir.

Q. Did you hear his testimony with respect to the creation of the irrigation districts in the Columbia Basin territory?

A. Yes.

Q. You are familiar, are you not, generally with the location of the East Columbia Irrigation District and the territory it embraces?

A. Yes.

Q. At the time of the formation of that district, the East District, did the Northern Pacific own certain lands within the boundaries of that district?

A. Yes.

Q. Were those lands or some portions of them formed into farm units within that district? [287]

A. Yes.

Q. To what extent were Northern Pacific lands in that district formed into farm units?

A. About twenty-seven hundred fifty acres divided into farm units.

Q. Now, prior to that time did the Northern Pacific enter into any contract or arrangements with the Bureau of Reclamation or the United States Government with respect to the disposition of lands within the project area which would be formed into farm units?

A. Yes.

Q. Just briefly what was the character of that contract?

Mr. Lutterman: If the Court please, I think if

(Testimony of P. D. Edgell.)

it is a written contract it should be produced rather than have the witness explain it.

Mr. Eastman: If the Court please, we have no objection to doing that, but I would like to make this explanation. I think counsel knows it, that all property owners in the Columbia Basin territory who wish to have their land brought within the irrigation district were required to enter into the same type of agreement that would require them to sell their lands to bona fide settlers.

Mr. Lutterman: Are you speaking now of what we commonly refer to as recordable contracts?

Mr. Eastman: I think that there are actually two [288] contracts, so-called recordable contract and the land settlement contract and the two of them together commit the owners of land in excess of that which they might retain, which I think is a hundred sixty acres, to sell their lands to bona fide settlers.

The Court: That is the point you want to bring out?

Mr. Eastman: That is the point; we want to bring it out.

The Court: No need of cluttering up the record with the contracts if that is the point. Is that the point of it?

Mr. Eastman: That is the point of it.

The Court: Do you stipulate that the contracts do so provide?

Mr. Lutterman: Yes.

The Court: It is covered.

(Testimony of P. D. Edgell.)

Q. Now, of that twenty-seven hundred fifty acres that were included in farm units, what if any disposition has been made of those lands by the Northern Pacific?

A. We sold approximately twenty-one hundred or twenty-one hundred fifty acres which were divided into farm units in accordance with our agreement with the Bureau.

Mr. Lutterman: I am sorry, Mr. Edgell, I cannot hear you out here.

A. (Continuing): We sold about twenty-one hundred [289] acres to twenty-one hundred fifty in accordance with our agreement with the Bureau which were divided into farm units.

Q. Those were to different individual settlers?

A. Yes, sir.

Q. Now, what acreage then in that district does the Northern Pacific still retain that has been divided into farm units?

A. That has been divided into farm units?

Q. Yes. A. Slightly over six hundred.

Q. And that comprises approximately how many farm units? A. Seven.

Q. Now, has there been any arrangement or agreement entered into in addition to the recordable contract or the land settlement agreement whereby the Northern Pacific had been permitted to retain those seven farm units for the time being?

A. Yes, sir.

Q. Will you explain briefly the character of that arrangement?

(Testimony of P. D. Edgell.)

The Court: This is probably not a matter of any controversy. Why don't you lead here and state it in a few words and we will get on with it? Isn't that satisfactory, counsel? It will save a lot of time. [290]

Mr. Lutterman: Yes, if the Court please.

The Court: Just lead here and state the substance of it and we will get at it quicker.

Q. Was an arrangement made with the Bureau of Reclamation whereby these seven farm units could be retained for a period of ten years for the purpose of industrial development?

A. Yes, sir.

Q. Would you indicate in what sections and what area those seven farm units lie?

A. Four of them are in Section 13 in 19, 28. Two of them are in Section 13, in Township 20 North, 28.

Q. Can you indicate on the map about where those two farm units you have just referred to would be located?

A. On this map four units are in Section 13 here. Two units in Section 13, 20, 28 would be just six miles north of here, three miles off the map.

Q. Six miles north of the Section 13 that is shown on Exhibit A-4? A. Yes, sir.

Mr. Lutterman: I didn't get the rest of that 13, the Section 13. You said it was 13?

The Witness: 20 North, 28 East.

Q. Now, that is six—where was the seventh unit?

(Testimony of P. D. Edgell.)

A. And then Section 25 in 20 North, 28 East which would be two miles off the map. [291]

Q. Now, are those farm units—you may return to your chair. Are those farm units in sections that are adjacent to the Connell Northern branch?

A. Yes, sir.

Q. Now, were there any other lands owned by the Northern Pacific in the territory lying between Moses Lake and Wheeler other than the four farm units in Section 13? A. That is all.

Q. Where was the next closest land that was owned by the Northern Pacific in that area?

A. In section 1 in 19 North, 28 East.

Q. Can you locate that section on the map, Exhibit A-3? A. That is this section here.

Mr. Lutterman: Would you mark it for convenience, Mr. Eastman, so that—make some reference to it.

Q. Would you indicate by an “X” in the center of that section the section which you have just referred to on the map?

(Whereupon, the witness does as requested.)

Q. (Continuing): Was any request made to retain any of the farm units in that Section 1?

A. No.

Q. For industrial purposes? What generally is the character of the land in that section?

A. There is some good farm units on the section. The better ones are underneath the hill, on the flat. There is [292] some fair farm land on the east side

(Testimony of P. D. Edgell.)

of the east side—east half of the east half. That is split by the Rocky Coulee Wasteway which goes down west across the land and then south.

Q. The land that the Northern Pacific owned in that section, is that as desirable for industrial purposes as the areas in Section 13?           A. No.

Q. Were any—was any portion of that land at the time that this arrangement was made with the Bureau of Reclamation committed to the Government or—withdraw that, strike that, please.

When did the irrigation water first come to the lands in this vicinity?

A. I believe it was 1952.

Q. Well prior to that time and when—before the water came on was there some sort of celebration in that area commemorating the furnishing of water to the area?

A. They had a celebration celebrating the first delivery of water.

Q. And was there a program in the Moses Lake rural area in connection with that?

A. Yes, sir.

Q. Were any of the farm units in connection with the Northern Pacific ownership donated in connection with that [293] celebration or program?

A. We donated farm unit 16.

Q. And what section was that in?

A. That was in Section 1.

Q. And that was committed prior to the time that an arrangement was made with the Bureau for withholding lands in the area, was it not?

(Testimony of P. D. Edgell.)

A. Yes, sir.

Mr. Eastman: You may inquire.

### Cross-Examination

By Mr. Lutterman:

Q. Mr. Edgell, I don't believe it is in the record. You spoke of this agreement with respect to the reservation of these lands in Sections 13, 2 Sections 13. That was made just last year in 1953, wasn't it?

A. That is right.

Q. And as part of the agreement it was understood—let me preface that first. You know, don't you, that any property in that area which has been divided into a farm unit must be sold at a—not in excess of a price set by the Bureau, isn't that correct?

A. That is the agreement we have, landowners.

Q. In all farm units? A. Yes. [294]

Q. And that same agreement applies with respect to the units which you have reserved under this arrangement with the Bureau for industrial purposes, is that correct?

A. That it has to be sold?

Q. Yes, that it has to be sold at a price not to exceed this appraised price by the Bureau?

A. That is right.

Q. And in the event that it has not been sold or utilized at the end of that ten-year period of course they will revert to farm units?

A. Yes, sir.

Mr. Lutterman: That is all, thank you.

(Testimony of P. D. Edgell.)

The Court: That is all, Mr. Edgell.

Next, please?

(Witness excused.)

Mr. Krier: Call Mr. Alsip. [295]

JOHN FRANKLIN ALSIP

being first duly sworn on oath, was called as a witness on behalf of the Defendant and testified as follows:

The Clerk: State your full name and spell your last name.

The Witness: John Franklin Alsip, A-l-s-i-p.

Direct Examination

By Mr. Krier:

Q. Where do you live, Mr. Alsip?

A. Seattle.

Q. By whom are you employed?

A. Northern Pacific Railroad.

Q. And in what capacity?

A. General Manager.

Q. And will you state the character of the General Manager's duties just briefly?

A. I have general supervision of transportation, maintenance of the Northern Pacific Railroad from Livingston, Montana, west.

Q. Now, how long have you been employed by the Northern Pacific, Mr. Alsip?

A. Forty-four years, four months and twenty-five days.

(Testimony of John Franklin Alsip.)

Q. Is there any reason for keeping track of those days?      A. Yes. [296]

Q. What is it?

A. I have three more days to go.

The Court: Awful way to spend your last days.

(Laughter.)

Q. Now, Mr. Alsip, as General Manager, are you familiar with this proposed piece of track that runs from a station near Wheeler to Section 13?

A. Yes, sir.

Q. And do you know the type of construction that was proposed to put in that track?

A. Yes, sir.

Q. Will you state what it is, please?

A. Well, without going into too much detail, it is a standard spur track construction.

Q. Well now——      A. Consisting——

Mr. Lutterman: If the Court please, I understand we have this understanding about spur track, but it seems to me that a statement to the fact that is a standard spur track construction is certainly objectionable in that——

The Court: Oh, I don't think so. I have this whole matter in mind. That is not going to—I assure you I don't seduce that easily. Go ahead.

A. (Continuing): Constructed primarily of second-hand rail, second-hand ties and fastenings. [297]

Q. And where will you get these rails and ties and fastenings?

(Testimony of John Franklin Alsip.)

A. We will get the rails and the ties from other tracks that are being relaid, revamped or improved.

Q. That is off of some main line some place or some branch?

A. That is right, some branch.

Q. Now then, is that the type of construction that is usually used in spur track construction?

A. Yes, sir, and wherever the second-hand materials are available we use them and that is what we did in constructing the U & I Sugar spur.

Q. This one would be——

A. Typical spur, yes.

Q. All right then, what would be—if there were some industries located in Section 13, Mr. Alsip, what would be the nearest station for those industries?      A. Wheeler.

Q. Where would the bills of lading be handled?

A. Wheeler.

Q. Have you contemplated having an agent at Section 13?      A. No, sir.

Q. Is there an agent at Wheeler?

A. There is, yes, sir.

Q. Now, would there be any passenger service from along [298] this proposed track?

A. No, sir.

Q. Would there be any express service?

A. No, sir.

Q. Would there be any mail service?

A. No, sir.

(Testimony of John Franklin Alsip.)

Q. Would there be any telephone or telegraph service? A. No, sir.

Q. What will the character of the traffic be?

A. Well, it will be entirely freight traffic.

Q. Switching?

A. Yes, switching and freight in and out.

Q. I see. Now, will there be a team track there?

A. No, sir.

Q. Would it be carload traffic?

A. Principally, yes, sir.

Q. Some LCL maybe?

A. I am not sure, but possibly it might develop into an occasional LCL shipment. I am not sure of that.

Q. But the general character of the traffic would be carload, is that it? A. That is right.

Q. Now, how will you handle the switching on that track? A. We would handle, how?

Q. How would you handle it? [299]

A. We would handle it the same as we do all of the stations along the line from Connell to Wheeler including the sugar spur with our local crews which make a turnaround daily except Sunday in Connell, a distance of approximately thirty—I believe it is thirty-nine miles.

Q. What trains run over that Connell Northern branch?

A. No trains run over the Connell branch except the local trains.

Q. And you say you have one daily except Sunday? A. Yes, sir.

(Testimony of John Franklin Alsip.)

Q. And that is a freight train?

A. That is right.

Q. Local freight?           A. Yes, sir.

Q. And you say the switching on this proposed track into Section 13 will be handled by this local freight?           A. Right, yes, sir.

Q. Would you mind explaining to the Court how that will be done, that is the physical necessities, what—

A. Well, we originate a Diesel locomotive with a train and engine crew at Connell in the morning and they take cars that are set out by the main line trains at Connell and do all the work including the delivery of cars and unloading freight, switching, etc., to Wheeler and return.

Q. Pick them up on the way back if— [300]

A. Any cars that are billed out will be picked up by that crew or any empty cars that are released they will be handled by that crew back to Connell.

Q. Would you just leave the train on the Connell Northern branch and the engine goes into these spur tracks along the way or tracks along the way, pardon, is that the way you do it?

A. Well, the train is standing on the main track usually and the engine is detached and goes in and sets out cars or picks them up as the case may be.

Q. Is that the way you do it at the Sugar Plant, U & I Sugar Plant?

A. That is right. When the crew arrives at Wheeler any cars that are destined to the sugar factory, they take them over and place them as

(Testimony of John Franklin Alsip.)

directed by the foreman at the sugar factory, pick up any cars that are released and return them to their train and handle them out as directed.

Q. They are switched into this local freight?

A. That is right.

Q. That is standing out on the branch?

A. That is right.

Q. All right.

Mr. Krier: You may cross-examine. [301]

### Cross-Examination

By Mr. Lutterman:

Q. Do you have an agent at Schrag?

A. No.

Q. And your business there, of course, would be handled in the same manner?

A. That is right.

Mr. Lutterman: That is all.

The Court: That is all, Mr. Alsip.

(Witness excused.) [302]

### J. T. DERRIG

having been previously sworn on oath, was called as a witness on behalf of the Defendant and testified as follows:

### Direct Examination

By Mr. Krier:

Q. In what capacity are you employed by the Northern Pacific?

The Court: Chief Engineer.

A. Assistant Chief Engineer.

(Testimony of J. T. Derrig.)

Q. Mr. Derrig, as Chief Engineer did you—  
Chief Western Engineer, Assistant Chief Engineer  
of the Western District—I have got to get this my-  
self—did you have anything to do with the plan-  
ning of the construction of this proposed track from,  
as shown on Exhibit 3, A-3, from a point near  
Wheeler into Section 13? A. Yes, sir.

Mr. Krier: Pardon me just a minute. Some of  
the labels came off of these maps. Yes, this is it.  
Mark it, please.

The Clerk: Defendant's Exhibit A-22 has been  
marked for identification.

(Defendant's Exhibit number A-22 marked  
for identification.)

Q. Now, Mr. Derrig, I am handing you what has  
been marked as Defendant's identification A-22 and  
ask you what [303] that is?

A. That is a track profile covering the alignment  
of a spur track leading to Section 13.

Q. Now, did you prepare that profile or was it  
prepared under your direction? A. Yes, sir.

Mr. Krier: We will offer the exhibit, if your  
Honor please.

Mr. Lutterman: No objection.

The Court: Admitted.

(Defendant's Exhibit number A-22 admitted  
in evidence.)

Q. All right, hang onto it. How long is that pro-  
posed track, Mr. Derrig?

(Testimony of J. T. Derrig.)

A. Three and nine-tenths miles.

Q. And what is the grade on it?

A. Maximum one point five grade undulated.

Q. What do you mean when you say it is undulated?

A. It is up and down on the contour of the country.

Q. It is designed to fit the contour of the ground, is it?

A. Yes, sir.

Q. Well, is that one point five all the way?

A. No, sir. The greater part of the distance the track or grade is laid on what we call the grass roots, just [304] on top of the grass.

Q. And part of it is one point five and part of it is less than that, is it?

A. One point five grade at the turnout near the Y and at one other point on the line just where we enter Section 13, a short distance.

Q. Otherwise, what is it?

A. Otherwise, it is from a naught naught up to one per cent.

Q. What type of rail is going into that?

A. We use second class rail.

Q. Second class?

A. Yes, sir, second-hand rail.

Q. What do you mean by that?

A. That is rail that is recovered from the main line relays.

Q. I see. And will that apply to the other materials to such as fittings and ties, spikes?

(Testimony of J. T. Derrig.)

A. To the other——

Q. Material?

A. Yes, sir; part of the other material will be second-hand, second-hand ties, as available; second-hand bars, second-hand bolts as available.

Mr. Krier: Have we got an exhibit as to the cost; did you offer that? [305]

Mr. Lutterman: That is as to '48 and he has testified as to the cost of the present proposed, but there is no exhibit on it. I think Exhibit No. 3 is——

The Court: Is the 1948?

Mr. Lutterman: Is the 1948, yes, he has testified.

The Clerk: Defendant's Exhibit A-23 has been marked for identification.

(Defendant's Exhibit number A-23 marked for identification.)

Q. Now, Mr. Derrig, I am handing you what has been marked for identification as A-23 and ask you what that is?

A. A-23 is a detailed estimate of the cost of constructing spur track leading to Section 13.

Q. That is the proposed track from the point near Wheeler to Section 13 as shown on Exhibit A-3?

A. Yes, sir.

Q. Now, did you prepare that cost estimate that you have in your hand, that?

A. Yes, sir.

Q. A-23? A. A-23 is my cost estimate.

Q. And does that include the right-of-way?

(Testimony of J. T. Derrig.)

A. Yes, sir.

Q. And what is the item for right-of-way?

A. \$35,200. [306]

Q. All right.

Mr. Krier: We will offer the cost estimate, if your Honor please.

The Court: No objection, I assume?

Mr. Lutterman: No objection.

The Court: Admitted.

(Defendant's Exhibit number A-23 admitted in evidence.)

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DEFENDANT'S EXHIBIT A-23

A.F.E. 742-53

ED-103-53

Northern Pacific Railway Company

Idaho Division

Connell Northern Branch

Wheeler (near)

Estimated cost of proposed spur track from a point on the Connell Northern Branch to Sec. 13, Twp. 19 N., Rge. 28 E., W.M., near station of Wheeler, Grant County, Washington, as per sketch dated Office of Division Engineer, Spokane, Wash., April 6, 1953, revised Dec. 3, 1953, and Dec. 28, 1953.

Proposed Work:

Construct spur, 20,768 ft. in length, and wye leg, 1,329 ft.; relay, 250 ft. Connell Northern Branch main track; construct new fencing; install syphons, culverts and crossings; adjust grade of county road at crossing; raise power and telephone lines; acquire necessary right of way.

Additions & Betterments—Additions	L	M
Right of way .....		\$ 35,200
Raise power and telephone lines .....	400	
Adjust road grade at station 2 + 66 .....	500	

(Testimony of J. T. Derrig.)

Additions & Betterments—Additions	L	M
Excavation, 21,000 cu. yds. @ 0.30 .....	6,300	
Borrow, including haul, 28,000 cu. yds. @ 0.30 .....	8,400	
Gravel topping in place, 8,000 cu. yds. @ 1.00 .....	8,000	
Premium on performance bond .....		350
Construct 21,737 ft. of 100# track, treated ties, pitrun gravel ballast @ 1.75 and 3.20 ..	38,040	69,560
Construct three 100# No. 9 turnouts .....	1,250	4,225
Install road crossings .....	500	500
Place 582 lin. ft. of culverts .....	1,595	3,355
Construct 316 ft. of syphons .....	4,585	2,780
Construct 20,000 l. ft. hog tight fence @ 0.30 and 0.15 .....	6,000	3,000
Place cattle guards .....	200	350
Engineering and contingencies .....	7,600	700
Account connection at Connell Northern Branch:		
Relay rail & fastenings, install switch ties, relocate telegraph pole line, inclu. engr'g ....	1,005	810
Less salvage (s.h. trk. material) .....		(300)
		510
	<hr/> <hr/>	<hr/> <hr/>
	\$84,575	\$120,930
		84,575
		<hr/> <hr/>
Total net cost .....		\$205,505
Summary:		
Total cost .....		\$205,805
Less salvage .....		300
		<hr/> <hr/>
Net Amount .....		\$205,505

Office of Ass't. Chief Engineer—Seattle, Wash.—Feb. 17, 1954.

Admitted February 25, 1954.

(Testimony of J. T. Derrig.)

Mr. Lutterman: We'd like to see it, however, counsel.

The Clerk: Defendant's Exhibit A-24 has been marked for identification.

(Defendant's Exhibit number A-24 marked for identification.)

Q. Now, Mr. Derrig, I am handing you what has been marked as identification number A-24 and ask you what that is?

Mr. Krier: I now have some extra copies of this, too. Pass that up to the Court and give one to Mr. Lutterman.

Q. (Continuing): What is that, Mr. Derrig?

A. It is a projection of a possible extension of Milwaukee track into Section 13 from Moses Lake to Section 13.

Q. Now, did you prepare this or was it prepared under your direction? [307] A. Yes, sir.

Q. Now, are you familiar with that country as shown on the map there, Mr. Derrig?

A. Yes, sir.

Q. Where did you get this base map?

A. The base map is a print from a section of the Government map, portion of the Government map identical with the other.

Q. Identical with the map on the board, or the easel, I should say, A-3? A. Yes, sir.

Q. Exhibit A-3. Now, Mr. Derrig, I notice there are two lines on there, a green one and an orange one. What are those? What are they? What are

(Testimony of J. T. Derrig.)

the green and the orange lines as shown on Exhibit A-24?

A. The green line is the one point one per cent project.

Q. And what is the orange line?

A. Orange line is a one point five per cent project.

Q. Did you put on those lines or were they put on under your direction?      A. Yes, sir.

Q. Now, where would those lines reach, that is, where do they start and where do they finish?

A. The green line originates at point "A" shown on [308] Exhibit A-24, thence goes to point "B," "C," "D," "G."

Q. And that is a, what grade?

A. That is the one point one per cent grade.

Q. Would that point "G," is that the same point that is shown on the——

A. Point "G" is at the end of the spur track, yes.

Q. As shown on Exhibit A-3 the proposed track. Is the point "G" the same as that point which terminates at the south boundary of Section 13 as shown on Exhibit A-3?      A. Yes, sir.

Q. Now, then, what is the orange line, the orange line? What does that indicate?

A. The orange line is a one-fifth per cent grade originating at the same point and thence to point "E," point "F," point "D," point "G."

Q. Well, then, point "A" is the junction of the Milwaukee track at Moses Lake?      A. Yes, sir.

(Testimony of J. T. Derrig.)

Q. And is point "G" the south boundary of Section 13 as shown on Exhibit A-3?

A. Yes, sir. Point "A" and point "G" are the beginning and ending of both lines and the identical location.

The Clerk: Defendant's Exhibit A-25 has been marked for identification.

Mr. Krier: I only have two. Pass this one [309] up to the Court to look at.

The Court: Would you like this while you are conducting your examination?

Mr. Krier: Well——

The Court: You had better keep it if it will help you. I will look over the witness' shoulder. It won't bother you, will it, Mr. Derrig, will it, if I look over your shoulder?

The Witness: No, sir.

Mr. Derrig, I am handing you Defendant's Exhibit A-25 for identification and ask you what that is? A. I didn't understand.

Q. What is that? I am handing you identification A-25 and ask you what that is, Mr. Derrig?

A. A-25 is a projection of a possible two per cent freight line from the Milwaukee's track at Moses Lake to Section 13.

Q. That is the end of the proposed track as shown on Exhibit 3? A. Yes, sir.

Q. All right, now, what would be the per cent of grade? A. Two per cent.

The Court: The fact that this is land classifica-

(Testimony of J. T. Derrig.)

tion has nothing to do with it, you use just the land classification map, is that right? [310]

Mr. Krier: That is right.

The Court: I see.

Q. Mr. Derrig, where did you get that base map on that?

A. This is a map for, a print from a portion of Government map, classification map upon which is shown the contours similar to the contours on the map marked Exhibit A-3.

Q. I see. Now, then, Mr. Derrig, what—calling your attention again to Defendant's Exhibit A-24, which is the other map, have you still got it in your hand? Now, calling your particular attention to the green line, which you have labeled as one point one per cent, what grade is that line?

A. Green line is a one point one per cent grade.

Q. And how long is it?

A. Three and seven-tenths miles.

Q. That is shown on the bottom of the exhibit, is it, that—

A. That is shown in the lower section of the exhibit.

Q. All right. Now, calling your attention to the orange line again, what is the length of that line?

A. The length of that line is three and one-tenth miles.

Q. All right. Now, what type, or would that involve a switchback? [311]

A. Yes, sir.

Q. And where is the switchback? Will you ex-

(Testimony of J. T. Derrig.)

plain to the Court how a train would operate over such a track as that?

A. A switchback for the green line is between points "B" and "C." The switchback for the one point five per cent grade is between points "E" and "F."

Q. What would you call this track between points "B" and "C"?

A. I call it a tail track on the sketch.

Q. And why do you need a tail track?

A. Oh, it is a track required for the switchback movement, fifteen hundred feet.

Q. Well, now, how would a train operate over such a track as constructed in that manner?

A. It would operate from Moses Lake up to point "B."

Q. Mr. Derrig, I mean physically, how would it get over the track? How would a train get over this track on a switchback movement?

A. It would have to move from point "A" to point "B" to point "C" and double back to point "B."

Q. Would it have to back, would the train have to back, do any backing?      A. One way.

Q. It would come out onto the tail track and then——

The Court: Push down? [312]

The Witness: Push down if the engine was the other way going in the reverse movement coming back.

Q. I see. All right. Now, then, which of these

(Testimony of J. T. Derrig.)

three grade projections, as you have shown on Exhibits A-24 and A-25, that is, the three grades, would you consider the best one from a——

Mr. Lutterman: I haven't seen A-25 and I don't think it has been offered yet.

Mr. Krier: It hasn't, and I am sorry. I should have offered it. Neither one have been offered. I will offer them both.

The Court: 24 and 25 are offered.

Mr. Lutterman: No objection.

The Court: Admitted.

(Defendant's Exhibits, numbers A-24 and A-25, admitted in evidence.)

Mr. Krier: Do you want to look at this?

Mr. Lutterman: I have seen this one. I haven't seen 25.

The Court: The last should be A-24 and A-25, Mrs. Douds.

A-25 looks to be about the same line as Mr. Crippen projected, approximately the same line that Mr. Crippen projected? [313]

The Witness: Close to it.

Mr. Krier: Is there any objection?

Mr. Lutterman: No.

Q. Mr. Derrig, from an engineering standpoint which would you consider as the best line to build of the three, the one point one, one point five and two per cent?

A. I would consider the green line being the most feasible.

(Testimony of J. T. Derrig.)

Q. Which one is that, which grade?

A. One point one.

Q. Why do you say that?

A. Less grading involved and alignment fits the contour of the country.

Q. You say there would be less grading?

A. Yes, sir.

Q. And why would it be better to have less grading?

A. Well, there is less maintenance expense in that country when the sand is blown and irrigation water having the alignment on the profile, on the natural ground or near the natural ground. There is considerable less maintenance expense.

Q. All right. Now, would there be any erosion involved, would there be any erosion?

A. There would be erosion on the high fills, yes, on any fill. [314]

Q. Now, what would you say about classification?

A. Possible some classification on the one point one grade, but very little because the cuts are very light.

Q. What do you mean when you say classification, Mr. Derrig?

A. Well, I mean rock.

Q. That is when you uncover the dirt there may be rock, is that what you mean?

A. Yes, sir.

Q. Do you know whether there is any rock in those along those proposed lines?

A. There is some rock.

Q. Now, there is some?

A. Yes, sir.

(Testimony of J. T. Derrig.)

Q. Do you know how much?

The Court: He said do you know how much, Mr. Derrig?

A. It is just a small amount of rock visible. There may be some rock not exposed.

Q. Now then, Mr. Derrig, did you make any estimates as to the cost of the construction of these three proposed lines as shown on Exhibits A-23 and A-24? A. Yes, sir.

Q. What were these estimates; what were the estimates of the costs on the proposed line? You are referring to some notes, are you? [315]

A. Yes, sir.

Q. And who made the notes, did you make these notes yourself? A. Yes, sir.

Q. All right. What would you say; what was your estimate of the cost of the construction of this proposed line which is shown on Exhibit A-23 as the one point one grade? A. \$184,558.

Q. Now, how do you arrive at that figure? Just give us briefly the factors that you used in arriving at that figure?

A. I used the same price per lineal foot that was used on the estimate for constructing the 1948 location to Moses Lake.

Q. Does that follow the same—

A. Namely—

Q. Does that follow the same grade or approximately the same?

A. The price was—our estimate at that time was \$9.45 on the basis 1954 prices.

(Testimony of J. T. Derrig.)

Q. All right. Now then, what figure per lineal foot are you using for your estimate which you have just given?

Mr. Lutterman: I don't quite understand. Is this track in place or for the rail or for what?

Mr. Krier: This is the proposed track [316] showing——

Mr. Lutterman: I know, but you are speaking of lineal foot. Is that the complete track or are you talking about rail or just what are you talking about?

Mr. Krier: I will ask him that.

Q. When you speak of lineal feet, Mr. Derrig, do you mean the track in place fully constructed?

A. Yes, sir.

Q. All right. Now then, what figure are you using for your estimate of \$184,000 for the one point one track?

A. The figure of \$9.45 is the cost of constructing a 1948 location from Wheeler to Moses Lake on the basis of the 1954 prices.

Q. Now then, when you say the proposed line from Wheeler to Moses Lake you mean the one as shown on Exhibit A-3 and marked "1948 projection Northern Pacific track"? A. Yes, sir.

Q. All right. Now then, have the prices changed between 1948 and 1954? Have the prices of your material and construction costs, prices——

A. Prices have increased.

Q. Have increased? A. Yes, sir.

(Testimony of J. T. Derrig.)

Q. Now then, did you make some examination of your 1948 estimates as against your 1954?

A. Yes, sir. [317]

Q. And did you arrive at any multiplier or factor which would give you the difference between the 1948 construction costs and the 1954?

A. Yes, sir.

Q. And what was that multiplier?

A. Increased cost of constructing track in 1954 over 1948 is twenty per cent.

Q. Now you took the 1948 estimate of the track, of the proposed track? A. Yes, sir.

Q. And broke it down per mile?

A. Yes, sir.

Q. And then applied this twenty per cent multiplier? A. Yes, sir.

Q. All right. Now, Mr. Derrig, did you make any estimate as to the cost of constructing this one point five grade track as shown on Exhibit A-23, 24?

A. Yes, sir.

Q. All right, what was the cost of that?

A. The cost of constructing the track on the one point five grade shown in yellow on the exhibit is \$166,155.

Q. All right. Now then, how did you arrive at that figure, Mr. Derrig?

A. Using the same price per lineal foot for the completed track, namely \$9.45 plus the additional cost of the [318] extra grading that would be required on the one point five line which I estimate at \$.70 per lineal foot.

(Testimony of J. T. Derrig.)

Q. And then you added that into the figure?

A. That is right. That totals \$10.15 per lineal foot for the completed track.

Q. \$10.15? A. Yes, sir.

Q. All right. Now, did you make an estimate of the cost of construction of the two per cent proposed projection of track as shown on Exhibit A-25? A. Yes, sir.

Q. And what was that figure, please?

A. Estimated cost of constructing two per cent grade shown on Exhibit—

Q. It is A-25, Mr. Derrig.

A. (Continuing): —A-25 is \$181,536.

Q. And how did you arrive at that figure?

A. I used the same factor per lineal foot, namely \$9.45 to which I added the additional cost of the grading.

Q. Now did you decide that there would be additional cost for grading on this two per cent grade?

A. Which was—excuse me until I get that. An additional cost of grading totals \$4.19 per lineal foot making a combined cost of \$13.64 per lineal foot.

Q. Mr. Derrig, is any of these figures which you have [319] given us on construction costs for these three grades, that is the one point one, one point five and the two per cent, include cost of right-of-way? A. It does not include the right-of-way.

Q. All right. Now then, Mr. Derrig, did you at our request make an estimate of the cost of this

(Testimony of J. T. Derrig.)

proposed track shown on Exhibit A-3 beginning at Wheeler and ending in Section 13 in 1925?

A. Yes, sir.

Q. All right, will you tell us how you arrive at that?

Mr. Lutterman: Did I understand you correctly, we are talking about a proposed track in 1925?

The Court: What it would have cost to put this same proposed track in in 1925, is that the question?

Mr. Krier: That is the question, your Honor, yes.

Mr. Lutterman: I don't understand the materiality.

The Court: Well, it is a little hard for me to say at the moment but let's have the figure.

Mr. Krier: I will tell you.

The Court: Tell me later. Let's get the figure and get Mr. Derrig off the stand.

Q. (Continuing): All right, go ahead Mr. Derrig, what would be the proposed cost of that track in 1925?

A. The estimated cost of constructing the [320] proposed track in Section 13 as of 1925 totals \$92,305 exclusive of right-of-way.

Q. All right. Now how did you arrive at that figure?

A. I arrived at that figure by using the factor of point five four two which is the estimated cost of constructing the track as of 1925 as compared with 1954.

Q. And you arrived at that multiplier or factor in the same way that you did of the others?

(Testimony of J. T. Derrig.)

A. Yes, sir.

Q. By comparing your records?

A. Yes, sir.

Q. All right. Oh, Mr. Derrig, I would like to ask you one more question. Did you make an estimate of what it would cost to build this proposed track as shown on Exhibit 3 and marked as the 1948 projection in 1954?

A. Yes, sir.

Q. All right, what was that figure?

A. \$246,088.

Q. Does that include right-of-way or exclusive of right-of-way?

A. Exclusive of right-of-way.

Q. Exclusive of right-of-way. All right, Mr. Derrig, will you give us the length of this proposed spur from Wheeler to, or near Wheeler down to the bottom of Section 13 south side from the junction with the Connell Northern to the [321] point of the curve? Can you do that without your profile?

A. I can give it to you approximately. It is—

Q. Could you give it to us exactly with your profile?

A. Yes, sir.

Mr. Krier: We had better have that then I guess.

A. It is approximately three and eight-tenths miles.

Q. From what points; what is three and eight-tenths?

A. Two and six-tenths miles.

Q. Two and six-tenths miles. All right.

The Court: That is from Wheeler junction to the curve, right?

The Witness: Yes, sir.

Q. Do you have the distance from the center

(Testimony of J. T. Derrig.)

of the section, of Section 13 from the point of the curve?      A. Three point four.

The Court: From Wheeler?

Q. That is from the Wheeler junction to the center of Section 13?      A. Yes, sir.

Q. All right. That is all, Mr. Derrig. You may cross.

Mr. Lutterman: I wouldn't be able to finish before lunch.

The Court: Well, let's start out, unless you'd rather do it otherwise. Rather do it otherwise?

Mr. Lutterman: It might be quicker. [322]

The Court: Well, we haven't much time so perhaps it will be just as well. Now how are we doing on the time-table?

Mr. Eastman: I think we are doing a little better, your Honor.

The Court: I thought probably we were, too.

Mr. Eastman: Let's see.

The Court: You apparently have just one more witness?

Mr. Eastman: We have, I think we will have two witnesses.

The Court: Two lengthy or——

Mr. Eastman: No, I don't think either one.

The Court: Then you ought to be able to rest by mid-afternoon perhaps?

Mr. Eastman: I would think so.

The Court: How about you? Are you going to have anything further?

Mr. Lutterman: Probably, but quite short.

(Testimony of J. T. Derrig.)

The Court: Then we ought to get on with the argument and the disposition of the matter this afternoon. Do you contemplate that or not?

Mr. Lutterman: Prefer to have—if—unless we have a lot of time this afternoon I'd prefer to have an argument tomorrow morning. [323]

The Court: That is all right. We will do that. We will give you tomorrow morning on it if you prefer that, and I think I can see where it would be preferable to do that. It would give me a further opportunity to examine all these exhibits and the data so I'd have it fully in mind. That might shorten down the length of your argument somewhat if I have it rather well in mind to start with.

Mr. Krier: That will be fine.

The Court: Fine then. I think if you are likely to adjourn then, I mean if you are certain that the evidence will not consume more than the whole afternoon we might just as well adjourn until two then and I have as always, have a lot of other things to do in spite of the popular opinion among counsel to the contrary, there seems to be a lot of things that they call on the Court to do at every recess and this day is no exception. Very well, in that case we will plan to conduct the argument tomorrow and we will adjourn now until two o'clock this afternoon.

(Whereupon, at twelve o'clock noon a recess was had until two o'clock p.m., at which time, respective counsel being present, witness J. T.

(Testimony of J. T. Derrig.)

Derrig resumed the witness stand for cross-examination by Mr. Lutterman, and the following proceedings were had, to wit:)

The Court: Are you ready? Proceed. [324]

Mr. Krier: Mr. Derrig, will you resume the stand.

Mr. Lutterman: May it please the Court, my records indicate that Exhibit 12 of the Plaintiff was admitted on stipulation. I just want to be sure.

The Court: I think it was. I have it so listed here.

Mr. Lutterman: That was my understanding of it.

Mr. Krier: Well, is that—

The Court: It is the N. P. map showing the track considered for the industrial development 13.

Mr. Krier: Yes, it can be admitted.

Mr. Lutterman: It is admitted.

The Court: If not, it will now be admitted.

### Cross-Examination

By Mr. Lutterman:

Q. Showing you Exhibit 13, Mr. Derrig, or Exhibit 12, is that a drawing prepared in your office showing proposed trackage development in Section 13 that we have been talking about?

A. Yes, sir.

Mr. Lutterman: I wonder if we could pin it on the board? He could see it better. It is kind of curled up.

(Testimony of J. T. Derrig.)

Q. If you will step down to the easel, please. The trackage shown on this—the track shown in the southern half [325] of Section 13 in red is the track which is shown on all the other map exhibits of that particular section which have heretofore been identified and introduced, is that correct?

A. The trackage?

Q. The red portion of the track?

A. For the entire distance within Section 13?

Q. That is correct. Then you show on this exhibit two tracks branching off of the red track to the east, is that correct?

A. Yes, sir.

Q. And those tracks extend a total distance of how much to the south boundary?

A. Approximately one-half mile.

Q. Each track approximately a half mile?

A. Yes, sir.

Q. You also show a track extending off of the red track a little distance north of the center line of 13 and thence extending to the southerly boundary of 13?

A. Yes, sir.

Q. Is that also an industry track?

A. It is just a prospectus.

Q. Yes, a prospective industry track?

A. It might be a possible industry track.

Q. It is labeled, "Future lead tracks and industry spur tracks to be constructed as required." Is that correct? [326]

A. Yes.

Q. And what is the total distance of the track which I have last described?

(Testimony of J. T. Derrig.)

A. Approximately, little over a half mile.

Q. And then in addition you have another track leading off of that track? A. Yes, sir.

Q. I notice, Mr. Derrig, that you have left a forty-five foot right-of-way for each one of these lead tracks. Is the reason for that to leave sufficient room for another track extending off of each of those tracks? A. Yes, sir.

Q. In other words, the tracks that are shown here would be used as lead tracks and the track which would actually serve an industry located in the block shown in that area would be another track connected off of that track?

A. That would be one possibility, yes.

Q. Yes. Now approximately what expenditure would be involved in the development of the tracks, just the tracks which are shown on 13 other than the track which is marked in red?

A. There is practically no grading involved whatsoever. It is just laid out right on the contour of the ground, practically no grading.

Q. That is correct? [327] A. Yes.

The Court: If you are through with the map, let's go back because Mr. Derrig drops his voice and I notice the Reporter has trouble getting it at the end.

Q. Can you estimate the cost of constructing the proposed tracks which are shown there in Section 13?

A. I would estimate they could cost about \$8.00 per lineal foot.

(Testimony of J. T. Derrig.)

Q. How much?

A. About \$8.00 per lineal foot.

Q. \$8.00 per lineal foot. And how many feet of track do you have there?

A. I'd have to check the map.

Q. All right.

The Court: A mile and a half, wouldn't it be, three of half a mile each, approximately.

Q. In addition to that there are two of a little more than a half mile each? There is one substantially more than a half mile and then another one of little less than a half mile?

The Court: I see. Approximately two miles of track?

The Witness: Yes, sir.

The Court: That will be close enough, won't it?

Mr. Lutterman: Yes. [328]

Q. And of course if it is fully developed in the way you explained where the tracks that are shown would be used as lead tracks and the track actually serving the industries off of that, there would be two tracks to each of the tracks there in addition, wouldn't that be right? A. Yes, sir.

Q. And the cost of those would be approximately the same? A. Yes, sir.

Q. Showing you Exhibit No. 3 which you have testified is your estimate of the 1948 proposal—is that correct? A. Yes, sir.

Q. And included in that estimate are items for the construction of the tracks in the yellow area shown on the exhibits of the 1948 proposal, is that

(Testimony of J. T. Derrig.)

correct? You are still familiar with your exhibit, are you not? I hate to disturb the board. In fact——

A. There is an extra track in there, yes, sir.

Q. And that was included in that estimate?

A. Yes, sir.

Q. And in addition to that there is an item for a station included in that, is that correct?

A. Yes, sir.

Q. And what is the amount of that item?

A. Station facilities \$13,000. [329]

Q. And in addition you were to have some terminal facilities there, is that correct?

A. Yes, sir.

Q. And that is included in that estimate?

A. Yes, sir.

Mr. Lutterman: That is all I have for that exhibit.

The Court: Anything else?

Mr. Lutterman: Yes, I meant I was through with that exhibit.

Q. Now showing you Exhibit A-23, that is your estimate for the construction of the present proposed track shown in red or blue on the, rather on the original Defendant's No. 3 here, No. 4 here?

A. Yes, sir.

Q. And included therein I notice is an item for right-of-way for some \$35,000, is that correct?

A. \$35,200.

Q. And what is the basis—is that just an estimate—is that—what is the basis for that figure?

(Testimony of J. T. Derrig.)

A. Which figure?

Q. Of your right-of-way figure?

A. That is a figure I obtained from my right-of-way department. It is close to the right-of-way.

Q. Is that just an estimate on an acreage basis, do [330] you know?

A. I can't positively state. It is my understanding it is the total estimated for the right-of-way.

Q. And so that really is not your figure then?

A. That is my figure, my check of a figure that was——

Q. But in so far as you are concerned it is just an estimate you have obtained from someone else?

A. That is right.

Q. And you personally do not know the basis of the estimate, is that correct?

A. In assembling that estimate I assembled the data from the various departments and included it in that.

Q. Calling your attention to the rail item, I notice that you show a hundred pound rail, is that correct?      A. Yes, sir.

Q. And you contemplate using a hundred pound rail in that track?      A. Repeat your question.

Q. You are using a hundred pound rail in that track?

A. Propose to use a hundred pound rail in that track, yes.

Q. What is the weight—by the way, I don't know, maybe his Honor knows what you are talking

(Testimony of J. T. Derrig.)

about when we talk about a hundred pound rail, but would you make a statement for the record as to what we mean by that?

A. A hundred pound rail is a hundred pounds per yard. [331]

Q. And the same when we speak about eighty pound rail. I don't know whether his Honor was familiar——

The Court: I couldn't remember whether it was yard or foot or rod or what it was, but I knew it was a measure of the weight of the steel in the rail.

Q. And what weight rail have you in your Connell Northern branch?

A. We have rail varying from seventy-two pounds to a hundred fifty-one.

Q. And on most of your tangent track or straight track what would be the weight of your rail?

A. Major portion of the track at the present time is seventy-two pound rail.

Q. Seventy-two pound rail. And you are familiar of course with your Schrag branch, are you? A. Yes.

Q. Your Schrag branch? A. Yes, sir.

Q. And by the way, what is the distance, that is the distance that the track going to Schrag extends from the main branch? It is on the map but we don't have the distance in the record.

A. Don't understand your question.

Q. What is the distance of the track extending from your Connell Northern branch to Schrag? In

(Testimony of J. T. Derrig.)

other words, [332] the length of your Schrag branch?

A. I haven't got the figures immediately available with me. I have them on my profile.

The Court: He said he had it there or they can supply it.

Mr. Lutterman: That doesn't give the distance.

The Court: Just supply the witness with the figure. Twelve miles?

Mr. Krier: Twelve miles, was——

Mr. Lutterman: Okay, I wanted it for the record. It is shown on the map but it isn't in the record.

The Court: It is stipulated it is approximately twelve miles. Go ahead.

Q. What is the maximum grade on your Connell Northern line? A. One per cent.

Q. Is it maximum? Is that the maximum grade?

A. Yes, sir.

Q. And does that include the line to Quincy?

A. No, sir.

Q. What is the maximum grade on that portion of the line?

A. I will have to get my profile.

Mr. Lutterman: Can you supply it, counsel?

Mr. Krier: What do you want me to do, [333] counsel?

Mr. Lutterman: He wanted to look at it to be able to answer the question as I understand. I have no objection to his referring to his records for that purpose.

(Testimony of J. T. Derrig.)

The Court: Now, your specific question is what?

Mr. Lutterman: The maximum grade on the line between Connell and Quincy.

The Court: It is the main line?

Mr. Lutterman: Yes.

The Court: Is that what you mean, the main line or the Northern?

Mr. Lutterman: The Northern Loop.

A. I notice a small section of one two here, but the maximum grade is substantially one per cent.

Q. One two you say is the maximum?

A. A short section is one two.

Q. That is what we speak of as maximum grade; we don't speak of ruling grade?

A. I don't speak of a short section of grade as controlling grade.

Q. I wasn't speaking of controlling grade.

The Court: That is all right, we have got it. "It don't make no difference." Go ahead with something else. He misunderstood you, I think. It is not the same term at all. I have it in mind.

Q. What is the maximum grade? Now I am not speaking of [334] ruling grade but your extreme grades say on your main line in the State of Washington?

The Court: His question was, what is the maximum or extreme grade that you have in the main line in the State of Washington?

A. I would say—I can't give the answer off hand, around one per cent.

(Testimony of J. T. Derrig.)

Q. If you don't know—I thought maybe you knew?      A. I don't know.

Q. Being the Chief Engineer I thought maybe you knew what your maximum grade was on your main line?

A. The maximum grade on our main line is two point two on the Snoqualmie Pass Hill.

Q. That is what I wanted to know, that is all. Now, what is the weight of your rail in the Schrag branch?      A. Repeat your question, please.

Mr. Lutterman: I guess I should stand up. Would you excuse me?

The Court: Certainly.

Q. What is the weight of the rail in your Schrag branch?      A. Eighty-five pound.

Q. Isn't it common practice, Mr. Derrig, when replacing rail in a branch line to use second-hand rail?      A. Yes, sir. [335]

Mr. Lutterman: That is all, thank you.

The Court: That is all, Mr. Derrig.

Mr. Krier: Just one more.

The Court: Excuse me.

### Redirect Examination

By Mr. Krier:

Q. Mr. Derrig, I refer you to Exhibit 12. What is the purpose of this, showing these tracks through farm unit No. 71 as shown on the exhibit?

A. That is a work sheet showing possibility of putting in some additional tracks when and if necessary as may be required by the industries.

(Testimony of J. T. Derrig.)

Q. Depending on the site of the industries?

A. That is right. One industry may take the entire space of two or three of those tracks we are speaking of. May take.

Q. I see, and one of them may take less?

A. One may take less.

Q. This is just a work sheet?

A. Just a work sheet.

Mr. Krier: That is all.

The Court: That is all. [336]

#### Recross-Examination

By Mr. Lutterman:

Q. Actually then, Mr. Derrig, the present track which is shown there would be in the nature of just a running track, is that correct?

A. That is correct, yes.

Mr. Lutterman: Thank you.

The Court: That is all now, I think.

(Witness excused.)

The Court (Continuing): Next please.

Mr. Eastman: Mr. Warsinske. [337]

L. T. WARSINSKE

being first duly sworn on oath, was called as a witness on behalf of the Defendant and testified as follows:

Direct Examination

By Mr. Eastman:

The Clerk: State your full name and spell your last name.

The Witness: L. T. Warsinske, W-a-r-s-i-n-s-k-e.

Q. Where do you reside, Mr. Warinske?

A. Spokane, Washington.

Q. Are you here in court today in response to a subpoena? A. I am.

Q. What is your present business or occupation, Mr. Warsinske?

A. I am a distributor for the Wonder Steel Buildings which is manufactured in Chicago, and I am the western distributor.

Q. Will you just explain what that Wonder Steel Building is?

A. Wonder Steel Building is a building that can be used on the farm or for industrial purposes. It is available for grain storage and can be, grain can be stored in the building without any cross ties in it and the building is strong enough to carry the grain storage, and it can be used industrialwise also and for a machine shed on the farm. [338]

Q. Is it in any manner similar to the Quonset steel buildings?

A. Only in shape and being that it is all made of steel.

(Testimony of L. T. Warsinske.)

Q. It is a structural steel material then, prefabricated?

A. It is a prefabricated building, yes.

Q. Now, how long have you been the representative for that company in connection with the distribution of that product?

A. Approximately a year.

Q. Prior to that time were you engaged in a similar business?

A. Yes, I was. I had the dealership for the Great Lakes Steel at Walla Walla.

Q. And what did you distribute, or what did you handle in connection with that dealership?

A. A similar type building which is known as the Quonset building, and I was located in Walla Walla.

Q. How long were you engaged in the business in connection with that distribution?

A. I got the dealership in March of 1947.

Q. And whereabouts in Walla Walla were you located?

A. East of Walla Walla, approximately a mile and a half approximately east of Walla Wall. [339]

Q. On any state highway or federal highway?

A. Yes, it is on the highway going to, between Spokane and Walla Walla. I think it is 410. I think that is the number of it. I am not too sure about it, but it is the main highway out of Walla Walla and it is right close to the Air Base.

Q. Do you still have any interest in that business, the distribution at Walla Walla?

(Testimony of L. T. Warsinske.)

A. I still have in the Wonder Building, but not in the Great Lakes Steel, no.

Q. That dealership has been discontinued as far as you are concerned?

A. As far as I am concerned it has.

Q. Now, when you were operating there under what name did you operate?

A. Interstate Metals, Inc.

Q. Now since—and did you own all the stock in the Interstate Metals, Inc.?

A. No, there was two other people who had stock in the Interstate Metals, but I bought them out and I am sole owner now of the Interstate Metals.

Q. Now in connection with the distribution for this new company are you still operating under the name of Interstate Metals Company?

A. Interstate Metals Company, yes. [340]

Q. But not in the corporate form?

A. That is right.

Q. Have you been interested in locating a plant for the distribution of the Wonder Steel Buildings in the Columbia Basin territory?

A. Yes, I have.

Q. I will ask you to state whether or not within the past year or two you approached the Milwaukee Railway Company with respect to a location in the Moses Lake area?

A. That is right.

Q. And when about was that?

A. Oh, approximately last June.

Q. Were any sites pointed out to you as being available?

(Testimony of L. T. Warsinske.)

A. Yes, there was a location—they showed me the map of the property that was available, but the only one that I was at least interested in at all was on the highway and they said they would let me know. And then a month or two later I called them and asked them why I hadn't heard from them in regard to that and they said that due to some controversy with the site in regard to some school wanting that property, that they would rather that I would pick out some other property and they tried to get me to move down by the lake, and I definitely was not interested in that property down by the lake.

Q. Those sites that they showed you were within the [341] City of Moses Lake?

A. I don't know whether that is in the city limits or not. That, I just don't know, where the city limits goes there.

Q. Well then, subsequently, did you learn of any land that the Northern Pacific had in the vicinity of Moses Lake?

A. Yes, I inquired around the City of Moses Lake looking for some property that was farther out. I didn't want to get right in the city if possible. I wanted farther out where I would have more room, and I learned that the Northern Pacific had some property out on the Wheeler Road and so I contacted the Northern Pacific and they said that they had some property out there and they thought it would be available.

(Testimony of L. T. Warsinske.)

Q. Did you subsequently examine the property?

A. Yes, I did.

Q. And is it suitable property for your purpose?

A. Definitely.

Q. And did you subsequently make an application to the Northern Pacific for a location on that property?

A. Yes, after I went to the location with Mr. Kirkwald, I think. Mr. Kirkwald was with me at the time and we looked over the property on the Wheeler Road and then I made out the application for——

Q. Have you heard that property referred to as Section [342] 13?      A. Yes.

Q. And where is it located, Mr. Warsinske, with respect to the Moses Lake Airport and the experimental farm?

A. Well, I would say it is west approximately a mile and a half west of Moses Lake and practically adjoins the experimental farm and lies about a half mile southwest of the small airport.

Q. You meant east of Moses Lake?

A. East of Moses Lake. The property is about a mile and a half east of Moses Lake, but lies just west of the experimental farm.

Q. And it is immediately adjacent to the municipal airport?      A. Yes.

Q. Towards the Wheeler Road?

A. It is towards the Wheeler Road, yes.

Q. And it is right up on top of the hill out of Moses Lake?      A. That is right.

(Testimony of L. T. Warsinske.)

Q. Are you prepared to—well, strike that.

In connection with your operation do you desire spur track service? A. Yes, I do.

Q. How will you handle the distribution of your product? [343]

A. Well, I found that from experience previous in the steel building business that you sell steel and it might not be enough to make up a full car, but nevertheless you will make up the full car and you must have a location where you can hold the differential between just one or two buildings and a full car so that you get the advantage of the freight rate.

Q. What I meant particularly was, Mr. Warsinske, that your supplies come inbound by rail?

A. All of them come in.

Q. Carload shipments? A. That is right.

Q. And at the facility then you arrange from there for the distribution throughout the territory?

A. That is right.

Q. And that is the type of an operation that you plan in the Columbia Basin area?

A. That is right.

Q. And on Section 13? A. That is right.

Q. Approximately how much land do you have in mind that you want, would want for your operation?

A. Well, I would like to have right around, oh two to three acres.

Q. Do you have in mind any possible expansion in connection [344] with your operation?

(Testimony of L. T. Warsinske.)

A. Yes, I do.

Q. In addition to the plant that you will build will you require an additional area for parking, trucking or any other facility?

A. Yes. Most of the steel will be trucked from the property and it is unloaded. That is the way most of it is taken delivery of.

Q. And you need an area for that distribution operation? A. That is right.

Q. Are you prepared to proceed with the construction facility as soon as the property is available for you and as soon as spur trackage is available?

A. That is right.

Q. In the meantime have you been handling some inbound shipments of steel? A. Yes, I have.

Q. And how have you been handling that?

A. Well, I have been shipping it to the closest siding to where the largest amount of steel goes.

Q. Now can you give us an estimate of approximately how many inbound carload shipments of steel you anticipate per year when your operation gets under way?

A. I anticipate approximately twenty to twenty-five [345] cars a year.

Mr. Eastman: You may inquire—just one second. You may inquire.

Mr. Lutterman: No questions, thank you.

Mr. Eastman: Thank you, Mr. Warsinske.

(Witness excused.)

Mr. Krier: Call Mr. Moore, please. [346]

## JEROME T. MOORE

having been previously sworn on oath, was called as a witness on behalf of the Defendant and testified as follows:

## Direct Examination

By Mr. Krier:

Q. Will you state your name, please?

A. Jerome T. Moore.

Q. And where are you employed, Mr. Moore?

A. In Seattle.

Q. You live in Seattle? A. Yes.

Q. By whom are you employed?

A. Northern Pacific Railway.

Q. And how long have you been employed by the Northern Pacific?

A. Well, I have had several periods of employment. First was in 1909, second in 1914 and the third commencing 1920.

Q. And in 1920 to date? A. To date, yes.

Q. All right. And in what capacity?

A. Well, I think you are interested—in 1914 I went into the Right-of-way Department and I came as a draftsman. In 1927 I came to Seattle as Chief Clerk for a couple of years and then I was become Assistant Industrial Agent. In [347] 1948, on Mr. Williams' retirement, I became Industrial Agent.

Q. You are now Industrial Agent?

A. Last year they changed the title to Western Manager Industrial Properties.

Q. I see. Now then, in your capacity as Industrial Agent, Mr. Moore, did you secure the right-of-

(Testimony of Jerome T. Moore.)

way for this proposed spur track as shown on Plaintiff's Exhibit 12?

A. It was secured by my assistant.

Q. Under your direction? A. Yes, sir.

Q. And that is the portion shown in red on Exhibit 12?

A. Down to our ownership, down to our land department property.

Q. I see. That is down to——

A. We secured an easement across the airport.

Q. An easement across the airport?

A. Yes, down to the north and south center line of Section 13.

Q. I see, and the rest of it goes over Northern Pacific property? A. Yes.

Q. What was the cost of that right-of-way?

A. \$35,200.

Q. And what is the character of it? [348]

A. It is all level land.

Q. I mean, is it—did you get the land deeded to you or——

A. Oh, no, we secured easements.

Q. All easements? A. It is all easements.

Q. Now, do you have any industries that are going to locate on Section 13?

A. Well, we have two firm applications.

Q. And who are they?

A. Pacific Fruit Company and Interstate Metals.

Q. And is that the reason the track is being built? A. Yes, sir.

Q. To serve those two industries?

(Testimony of Jerome T. Moore.)

A. Yes, sir.

Q. Now then, did you have any other applications, Mr. Moore?

A. Well, I had one other, McClintock-Trunkey. Last December they were very impatient to start operations. Mr. Trunkey had a contractor and I was to secure evaluations so he could start construction, but in the meantime a competitor bought them out.

Q. I see. And that application is out?

A. It is no longer being considered.

Q. Now what is the width of the right-of- [349] way?

A. All eighty feet. Practically all of it is eighty feet.

Q. Is there any reason for it being eighty feet?

A. Well, we need a ditch on each side and you need room for the roadbed.

Q. How do you determine how much right-of-way, that is, the width of it?

A. Well, the Engineering Department tells me what to get, what they require.

Q. You try to get it, do you?           A. Yes.

Q. If you can?           A. If I can.

Q. And if you have more than you need, what do you do with it?

A. Well, if the adjacent farmers wish to use it for agricultural purposes, we would lease it to them.

Q. Is that a practice all over the railroad?

(Testimony of Jerome T. Moore.)

A. Yes, sir. It is to cover encroachments.

Mr. Krier: Pardon me just a second.

Q. Now, Mr. Moore, in your work as Industrial Agent, do you locate industries on Northern Pacific property?

A. Generally we show them what land we have or what we know is available adjacent to our railroad.

Q. And who does the choosing where [350] they go?

A. Well, it is up to the industries where they want to go.

Mr. Krier: All right, you may cross.

#### Cross-Examination

By Mr. Lutterman:

Q. Mr. Moore, the purpose of building that four miles of track is not simply just to serve the Pacific Fruit and Mr. Warsinske's fruit, it is to develop an industrial area as shown in Exhibit No. 2, isn't that correct?

A. I would hope to locate another industry at least.

Q. With respect to McClintock-Trunkey it is a fact, isn't it, that they were solicited for locating a beer warehouse there?

A. Yes, sir; yes, sir.

Q. And after they were bought out by another concern you continued negotiations with their successors, isn't that correct?

(Testimony of Jerome T. Moore.)

A. We called on the Traffic Department, called on a Mr. Lang and——

Q. When they no longer had the beer account they were no longer interested in locating at Moses Lake, isn't that correct?

A. Yes, Mr. Trunkey lost the beer account.

Q. Yes. Someone else now has it? [351]

A. Yes, sir.

Q. But it was your purpose, if possible, to locate them as a beer warehouse and subsequently a wholesale grocery house, isn't that correct?

A. Yes, we hoped they would expand there, yes.

Q. And I assume, Mr. Moore, if you were permitted and did put a track in Section 13 as shown on Exhibit No. 12, that it would be your purpose to solicit industries such as other wholesale groceries or other distributing companies?

A. I am looking——

Q. For the purpose of locating in that area, isn't that correct?

A. I am looking particularly for a fruit processing plant.

Q. Could you answer my question please?

Mr. Krier: I think he did. A. I did.

The Court: No, he didn't answer it. He came back with something a little different.

Mr. Krier: All right.

The Court: You answer Mr. Lutterman's question if you can, Mr. Moore.

Mr. Krier: Do you have the question in mind?

(Testimony of Jerome T. Moore.)

The Witness: It was—he wanted me to say I was looking for—well, what is it? [352]

The Court: Whatever he wanted you to say wasn't the question.

Mr. Krier: Never mind that.

The Court: In substance the question was, would you turn down any industries that wanted to locate in that area if they came along and wanted to?

A. I am influenced by Traffic Department recommendations, and if they wanted to locate the industry I would do the real estate work.

Q. And you would locate it and that would be true for instance of a beer distributor or a wholesale grocery distributor? A. I think so.

Mr. Lutterman: That is all, thank you, Mr. Moore.

Mr. Krier: That is all, Mr. Moore.

The Court: We didn't have a final question for you, Mr. Moore. You are excused

Mr. Lutterman: I didn't even get him to try to say something.

(Witness excused.)

Mr. Krier: May we have the Court's permission to recall Mr. Adams, please?

The Court: Certainly.

Mr. Krier: Mr. Adams, will you come forward, please? [353]

## WALTER RAY ADAMS

having been previously sworn on oath, was recalled as a witness on behalf of the Defendant and testified as follows:

## Redirect Examination

By Mr. Krier:

Q. Mr. Adams, I understand you told me after recess last night that you had made a mistake in some of your testimony and that you wanted to correct it?           A. Yes, sir.

Q. Will you step down to this exhibit that is now on the board here, A-3, and I believe the mistake was in the matter of elevations?

A. Yes, I made a mistake in saying that there was a bench mark at the corner of the northwest corner of 23 and gave a certain elevation which was a misinterpretation of the map. There is no bench mark at that corner. There is, however, one 515 and approximately 515 feet just a little bit over to the west on the north line of Section 22, and that elevation of that bench mark is N-6031. I am very sorry I——

The Court: I am sure it is pure inadvertence, Mr. Adams. Don't let it concern you.

Q. Mr. Adams, what is the elevation of Moses Lake right on the water?

A. The elevation of the water is very close to 1044 [354] elevation.

Q. And those elevations, of course, are above sea level, aren't they?

A. Well, they are on the Government datum,

(Testimony of Walter Ray Adams.)

the datum which was used. I am not thoroughly familiar with it, but I would assume it is above sea level.

Q. I see. Now then, Mr. Adams, you—these circles that are on A-3 and numbered 1 to 10, inclusive, you placed those circles on Exhibit 3 from—

A. At the request of the Court, yes.

Q. —from, what was the number of that other exhibit?

The Court: A-5.

Q. All right, A-5. Transferred it from A-5 to A-3? A. Yes, sir.

Q. And they are in the same position on A-3 that they were on A-5? A. Yes, sir.

Q. They are exact in all other respects?

A. Yes, sir.

The Court: To save the record why don't you withdraw A-5 now so we don't get mixed up?

Mr. Krier: All right, with consent of counsel and Court we will withdraw—

The Court: All right, withdraw A-5 because now all the data on A-5 is on A-3. [355]

Mr. Krier: Let's see, we have that profile map here some place.

Q. Mr. Adams, I am handing you Exhibit A-4 and ask you if you didn't at my request and with the Court's consent place the per cent of grades on those, on the profile—or explain to the Court what you did to it after it was introduced?

(Testimony of Walter Ray Adams.)

A. On profile AA in red I put a line which is indicated as a thirteen per cent grade.

Q. All right. Now what did you do to line BB?

A. On profile BB I placed a line in red which is indicated as a five and five-tenths per cent grade.

Q. Those are the only alterations you made?

A. Those are the only alterations I made to the exhibit and that was done at the request of the Court, I believe.

Mr. Krier: That is all I have, your Honor.

The Court: Anything further, Mr. Lutterman?

Mr. Lutterman: Yes, one question.

#### Recross-Examination

By Mr. Lutterman:

Q. Mr. Adams, I think this was the map that you prepared, isn't that correct, this Exhibit A-3?

A. That is the map on which I put railroad tracks on [356] the Government, or the, the Government map, yes.

Q. If you would just step down for a moment. Calling your attention to Sections numbered 20 and 29, what township and range is that, 20 and 29?

A. Township 19, Range 29.

Q. That is—the whole map is, I see.

A. No, this part of the map, this side is Range 28.

Q. Well, the sections I am talking about anyway are Township 19 North, Range 29 East, W.M., is that right?      A. Yes, sir.

(Testimony of Walter Ray Adams.)

Q. And calling your attention to these sections 20 and 29, both of these sections including 29 are the U & I Sugar Company's plant site area, isn't that right?

A. I don't have that knowledge of my own. I have been told that.

Q. 29 as well as 20?

A. Yes, I have been told that but I do not know that of my own knowledge.

Q. And in that case this distance three point four to the plant property would be one mile, actually a little more than one mile less, isn't that correct?

A. The—I can't say that exactly. If it was owned by the Sugar Company the distance to the Sugar Company property would be two point four, but to the end of the Milwaukee ownership it is still three point four. [357]

Q. But I am speaking to the boundary, the southern boundary of the Sugar Company plant area would be one mile less?

A. I don't know. As I say I don't know that of my own knowledge.

Q. But if that 29 is, that is correct?

A. Yes.

Mr. Lutterman: That is all.

Mr. Krier: I guess we will have a last question.

The Court: Anything further?

Mr. Krier: Yes, your Honor.

The Court: Resume the chair, please.

Mr. Krier: Have this marked, please.

(Testimony of Walter Ray Adams.)

The Clerk: Defendant's Exhibit A-26 has been marked for identification.

(Defendant's Exhibit number A-26 marked for identification.)

### Further Redirect Examination

By Mr. Krier:

Q. Mr. Adams, I am handing you Defendant's Exhibit A-26.

Mr. Krier: Is that correct?

The Clerk: Right.

Q. And ask you what that is?

A. Did you ask me what this was?

Q. Yes, I ask you what it is? [358]

A. This is a map from the, that was sent to our department by the Milwaukee Railroad and it shows the U & I Sugar spur from the connection of the Milwaukee branch to Moses Lake to the Sugar Company also to the, through the Sugar Company plant.

Q. Does that map show the Milwaukee ownership of the Sugar spur track?

A. It shows the Milwaukee track and at the south line of Section 20 it gives the distance from their property, from their branch line as station 177 plus 26, which figures out three and four-tenths miles.

Q. Is that where you got the information for the purpose of putting that on?

A. We got this information, that information

(Testimony of Walter Ray Adams.)

from this map and also from a letter in Mr. Derrig's files from a Milwaukee official that says that is the end of the Milwaukee ownership, and also from an agreement which was made up between the Milwaukee, the Northern Pacific and the Sugar Company, which shows this same location as being the end of the Milwaukee ownership.

Q. That is ownership of the track?

A. Of the Milwaukee track, yes. It defines the ownership of the Milwaukee track and the——

Q. That is where you got the information for the purpose of putting Milwaukee's Sugar spur on Exhibit A-3? [359]

A. Yes, sir.

Mr. Krier: All right, we will offer the map, your Honor.

The Court: Any objection?

Mr. Lutterman: No objection.

The Court: Admitted.

(Defendant's Exhibit number A-26 admitted in evidence.)

Mr. Krier: That is all.

#### Further Recross-Examination

By Mr. Lutterman:

Q. Does that show the boundary of the Sugar Company's ownership of the land?

A. I couldn't say for sure. I haven't looked at it.

Q. Take a look at it and see. Does it?

(Testimony of Walter Ray Adams.)

A. (No response.)

Q. Well, if it doesn't I will bring it out later.

The Court: A great deal of to-do about something that isn't very important it seems to me. I might say, Mr. Adams, you are the first witness that I have heard express regret for having spoken incorrectly from that chair.

The Witness: I would hesitate to ever say anything that is incorrect.

The Court: I can see you are that kind of a person, [360] that is why I thought you would be interested to know you are the first who has expressed regret. I rather think it will be some time before we find anyone else either. You are excused.

(Witness excused.)

Mr. Eastman: Mr. Bone. [361]

### ROBERT D. BONE

being first duly sworn on oath, was called as a witness on behalf of the Defendant and testified as follows:

#### Direct Examination

By Mr. Eastman:

The Clerk: State your full name and spell your last name.

The Witness: Robert D. Bone, B-o-n-e.

Q. Where do you live, Mr. Bone?

A. In Seattle, Washington.

(Testimony of Robert D. Bone.)

Q. Are you in the employ of the Northern Pacific Railway Company?      A. I am.

Q. In what capacity?

A. Western Freight Traffic Manager.

Q. How long have you been employed by the Railway Company?

A. Thirty-two years, little over thirty-two years.

Q. Will you just explain, state briefly the various positions that you have held with the company during that tenure of service?

A. Well, during the greater parts of 1922, 1923, I was in clerical capacities. From the latter part of 1923 until the latter part of 1942 I was City Freight Agent located at Seattle. My previous service was in Seattle also. And then [362] from September of 1942 until January of 1947, as District Freight and Passenger Agent in Aberdeen, Washington. From January of 1947 until July of 1952 I was General Agent, Freight Department, Seattle. Have held my present position since July of 1952.

Q. Just briefly what are your duties in your present position?

A. Well, I have supervision over the sales and service activities of the Freight Traffic Department on the west end, that is west of the Montana-Idaho state line, and have the responsibility for getting all the freight in that territory, supervision over the sales staffs in that territory.

Q. Your jurisdiction you stated extends from what point?

(Testimony of Robert D. Bone.)

A. West of the Montana-Idaho state line, from Alaska to California.

Q. You have been in the courtroom throughout this hearing?      A. Yes, sir.

Q. And you are familiar, are you not, with the proposed location or the location of proposed industries on lands in Section 13?      A. Yes, sir.

Q. And are you familiar with the character of the proposed operation of two industries who it has been testified are [363] interested in locating thereon?      A. Yes, I am.

Q. Did you hear Mr. Watson's testimony this morning with respect to the estimated volume of traffic which would be shipped inbound and outbound from the facilities of the Pacific Fruit and Produce established there?

A. Yes, I did.

Q. And did you hear Mr. Warsinske's testimony to the same matter?      A. I did.

The Clerk. Defendant's Exhibit A-27 has been marked for identification.

(Defendant's Exhibit number A-27 marked for identification.)

Q. I hand you, Mr. Bone, what has been marked for identification as Exhibit A-27 and will ask you to state what that is?

A. Well, this is a statement prepared in my office by my direction which shows the estimated number of carload shipments handled per year over

(Testimony of Robert D. Bone.)

proposed trackage to Section 13, and estimated Northern Pacific revenue therefrom.

Q. Do the carload figures which you show with respect to the anticipated traffic from Pacific Fruit and Produce Company facility correspond with the figures that Mr. Watson gave on the stand this morning? [364]

A. They do generally except that we have broken them down farther than he did in his testimony for purposes of——

Q. Can you point out where there is any change in that?

A. I believe he consolidated some of the figures just showing potatoes and onions to general territory, whereas we had to break it down into destinations in order to arrive at our revenue figures. I think——

Q. To refresh your recollection of his testimony, as I recall he testified that there would be a hundred cars from North Dakota, Minnesota points and points east, and a hundred thirty cars from the Chicago territory. Now, did you identify those same shipments on your Exhibit A-27?

A. I beg your pardon, what was that? A hundred cars, what did he say that was?

Q. My understanding was that it was from North Dakota and Minnesota.

A. From North Dakota and Minnesota?

Q. To North Dakota.

The Court: To the Dakotas.

A. Oh, I see. That is where I couldn't follow you.

(Testimony of Robert D. Bone.)

Q. Outbound to North Dakota and Minnesota.

A. One hundred cars?

The Court: The way I had it, was he gave a figure of a hundred cars to the Dakotas and gave a hundred thirty to Minnesota, Wisconsin and the east. [365]

Mr. Eastman: I think that is right.

A. That is, I think, where we made the change in arriving at revenue figures. We took the hundred cars and the hundred and thirty and changed that for purposes of arriving at the revenue to a hundred eighty cars to North Dakota and Minnesota which territories take the same rate groups, and fifty cars to Chicago territory, arriving at the grand total of two hundred thirty which he quoted.

Q. Now, also he testified with respect to citrus fruits from Florida and Texas to Wheeler at twenty-five. Have you broken that item down in your—

A. Yes, for the same reasons because of the difference in rate, the rates and consequently the difference in revenue we broke that down into fifteen cars estimated from Florida and ten cars from Texas, making the total twenty-five.

Q. And that was necessary because of the difference in the rates?      A. That is right.

Q. And the differential?      A. That is right.

Q. Similarly he testified to seventy-five cars from California and Arizona and you show fifty and twenty-five from those two points separately?

A. That was done for the same reason.

Q. And from—in connection with the canned

(Testimony of Robert D. Bone.)

goods items [366] he testified to fifteen cars from Minnesota and Wisconsin to Wheeler.

A. We had to break that down for the reason that from Minnesota we assume that—or we can safely assume that we will get one hundred per cent of the revenue, whereas from Wisconsin, although the rate groupings are the same, we would have to make a division of revenue with the lines east of the Northern Pacific, so I broke that down into ten from Minnesota, five from Wisconsin.

Q. Now in connection with shipments from California and Oregon points to Wheeler he established a total of twenty. Did you—

A. We had to break that down. We established fifteen from California points and five from Salem, Oregon.

Q. Now as I understand this exhibit purports to show that upon that estimated tonnage or carload shipments the Northern Pacific revenue would be the figure that is indicated following Pacific Fruit and Produce Company in the second from the last line, \$169,600?

A. That is correct. That is the Northern Pacific's division of the gross revenue, Northern Pacific's gross revenue, gross division out of the gross revenue?

Q. Yes.

A. That doesn't contemplate profit, of course; that is the Northern Pacific division. [367]

Q. Northern Pacific's division out of gross revenue? A. That is correct.

(Testimony of Robert D. Bone.)

Q. And have you similarly computed the Interstate Metals Company revenue?      A. Yes.

Q. And that figure is \$21,000?

A. \$21,000 based on an estimate of twenty-five carloads.

Q. So the figure of \$190,600 is the estimated revenue from the traffic which would be received on an annual basis from the two industries which presently have indicated to locate in Section 13?

A. That is correct.

Q. Mr. Bone, in connection with the rail operation to Section 13, what rates would apply from and to industries located at that point?

A. It is our intention, and we have so advised those that have inquired, that the Wheeler rates will be applicable in every case.

Q. Do you similarly apply those Wheeler rates at any other point in the Wheeler area served by spur trackage?

A. Yes. On transcontinental business the Wheeler rates would also apply. On short hauls there may be a difference according to mileage, but we—that is all determined in the individual cases.

Q. Specifically what about the U & I Sugar plant? [368]

A. Well, that spur is within the switching limits of Wheeler and takes Wheeler rates definitely.

Q. The Wheeler rates do apply?

A. That is correct.

Q. If it is necessary to make the Wheeler rates apply at, to industries on Section 13, would it be

(Testimony of Robert D. Bone.)

your purpose to similarly provide that those industries would be within the switching limits of Wheeler if it is necessary for tariff purposes?

A. Oh, yes, if it appears according to our tariff experts or legal advisors that we have to have specific reference to the fact that Wheeler rates apply from Section 13, we will make such provision in the tariffs.

Q. Would there be any switching charges to apply from Wheeler to these industries over these tracks?

A. Only in the case of what you would call intra-terminal switches where there might be a switch between one industry and another industry in the same community, but as far as the carload traffic is concerned going to or from Section 13 and other stations outside of Wheeler, there would be no switching charges in addition to the line haul rate. Line haul rate would govern.

Q. And that situation is also true at the Sugar refinery, is it not? A. That is correct. [369]

Mr. Eastman: At this time I would like to offer Exhibit A-27.

The Court: Any objection? A-27 is offered.

Mr. Lutterman: No objection.

The Court: Admitted.

Mr. Lutterman: With the understanding of my general——

The Court: Same understanding. I have it in mind.

(Defendant's Exhibit number A-27 admitted in evidence.)

## DEFENDANT'S EXHIBIT A-27

Statement Showing Estimated Number of Carload Shipments Handled Per Year Over Proposed Trackage to Section 13 and Estimated Northern Pacific Revenue Therefrom

Pacific Fruit & Produce Company (Pacific Gamble Robinson Co.)

Potatoes and/or onions:	N.P. Revenue	Total
Wheeler to Butte & Billings, 59c plus 15%—min. 36,000 .....	\$17,100	70 cars
Wheeler to ND & Minn., \$1.23—min. 36,000 .....	79,700	180 "
Wheeler to Chicago territory, \$1.46—min. 36,000 (83½%) .....	21,900	50 "
Wheeler to Seattle, 26c plus 15%—min. 36,000 .....	8,000	75 "
Wheeler to other coast points, 32c plus 15%—min. 36,000 .....	3,300	25 "
Forwarded total .....	<u>400</u>	"
Citrus fruits:		
Florida to Wheeler, \$2.03—min. 40,000 (53½% of West of KC) .....	3,500	15 "
Texas to Wheeler, \$1.87—min. 40,000 (53½% of West of KC) .....	2,600	10 "
Los Angeles to Wheeler, \$1.19—min. 26,700 (26%) .....	4,100	50 "
Arizona to Wheeler, \$1.42—min. 26,700 (20%) .....	1,900	25 "
	<u>\$130,000</u>	

## Canned Goods:

Minnesota to Wheeler, \$1.49—min. 60,000 .....	10	“	8,900
Wisconsin to Wheeler, \$1.49—min. 60,000 (83½%) .....	5	“	3,700
Florida to Wheeler via Minn. tfr., \$1.64 plus 12e—min. 60,000 (50½%) .....	20	“	10,600
California to Wheeler, \$1.02—min. 60,000 (35%) .....	15	“	3,200
Salem, Ore., to Wheeler, Port Combination (NP 49c plus 15%—min. 40,000) 5	5	“	1,100
Received total .....	55	“	39,600

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\$169,600

Pacific Fruit &amp; Produce (Pacific Gamble Robinson)—Total .....555 cars

## Interstate Metals Company

## Sheet steel:

Chicago to Wheeler, \$1.48 plus 15%—min. 60,000 (83½%) .....	25	“	\$21,000
Grand total .....	580	cars	\$190,600

Admitted February 25, 1954.

(Testimony of Robert D. Bone.)

Q. Mr. Bone, will you explain what a team track is?

A. Yes. A common use of the term is applied to a track that is available for the use of the general public and that normally would be for industries that do not have spur track facilities of their own.

Q. Is it or is it not contemplated there would be team track facilities on——

A. We have no intention of establishing team track facilities in Section 13.

Q. Just trackage to serve whatever industries are located there?

A. The plans thus far have just been for the lead track and from there on the various specific cases will have to be handled on their own merits. Thus far the only thing [370] we contemplate are the spur tracks to serve the two industries that have indicated their intention of locating in this area.

Mr. Eastman: I think that is all. You may cross.

#### Cross-Examination

By Mr. Lutterman:

Q. Mr. Bone, if you got your track into Section 13 would it be pretty easy to put in a team track? It would, wouldn't it?

A. Yes, it would be easy to as far as the——

Q. And from your point of view it would be very desirable, wouldn't it?

A. Well, I don't know. That would have to be determined by what demand there was for any

(Testimony of Robert D. Bone.)

facilities. We have no intention at the present time.

Q. If demand for such delivery facilities did arise it would be very desirous from your point of view to have a team track?

A. If we could justify the expense by the traffic available, that is true anywhere.

Q. And in that case if you could it would be your purpose to put in a team track there, wouldn't it?

A. If we could justify the expense?

Q. Yes, sir. A. Right. [371]

Mr. Lutterman: That is all.

The Court: That is all.

Mr. Eastman: That is all.

(Witness excused.)

The Court: Call your next.

Mr. Krier: May we have just a minute, if your Honor please?

The Court: Certainly, of course.

Mr. Eastman: If the Court please, I think that probably will complete our case, but there may be one or two matters that we can——

The Court: If you think of something else I will allow you to put it in addition before we close.

Mr. Lutterman: Before they close their case with the Court's permission and counsel's indulgence, I would like to call Mr. Alsip back for just a couple of cross-examination questions.

The Court: Well, if we are going to be a few minutes I think that we will take a recess at this time. That will give you time to ponder the situa-

tion and then you may go ahead and put whatever you have in mind in or give you both a chance to think about it. We are going to finish in just a short time in any case, aren't we?

Mr. Lutterman: We will have very short——

The Court: Very well. We will take a [372] recess.

(Whereupon, at three-twelve o'clock p.m. a recess was had until three-twenty-five o'clock p.m., at which time respective counsel being present, the following proceedings were had, to wit:)

The Court: I believe we have an ex parte matter here, do we?

(Whereupon, a short ex parte matter was considered.)

The Court: Are you ready now, gentlemen?

Mr. Eastman: Yes. The plaintiff wanted to recall Mr. Alsip. What additional questions we have would be through Mr. Alsip.

The Court: Fine, one trip will do both then, Mr. Alsip. [373]

JOHN FRANKLIN ALSIP

having been previously sworn on oath, was recalled as a witness on behalf of the Defendant and testified as follows:

Further Cross-Examination

By Mr. Lutterman:

Q. Mr. Alsip, you of course, are familiar with your Schrag branch?           A. Yes, sir.

Q. And Schrag is a station on your line?

A. Right.

Q. It is, however, a non-agency station?

A. That is right.

Q. It has no depot?           A. No, sir.

Q. No agent?           A. No, sir.

Q. You have no passenger service?

A. No, sir.

Q. No LCL service?

A. I wouldn't say there was no LCL service. However, it is performed by the local crew if there is.

Q. Have no telegraph service or no baggage service?           A. No, sir.

Q. And then the business for that station is handled at Wheeler? [374]

A. The billing, yes, sir.

Q. And the other accounting?           A. Yes, sir.

Q. It is done at Wheeler?           A. Yes, sir.

Mr. Lutterman: That is all.

(Testimony of John Franklin Alsip.)

Redirect Examination

By Mr. Krier:

Q. Mr. Alsip, I believe this morning you testified that you are familiar with this proposed spur from near Wheeler down into Section 13?

A. Yes, sir.

Q. To the west. What kind of rail will be used in that?

A. Well, when they made up the estimate the only rail that was available would be hundred pound section. However, if by the time we actually start the construction or actually start track laying, if we had ninety pound section we'd use it.

Q. You'd use what is available?

A. That is right.

Q. And where do you get the rail that is available?

A. It must be recovered from what we call relays.

Q. Well—— [375]

A. In other words, if a branch line existing from A to B was laid with ninety pound rail and we were able to get the heavier rail and that was due for relay, we use the ninety pound recovered from that section, that territory, for spur tracks and repair.

Q. And that is the type of rail that you would use or the classification, maybe I should say, of rail that you would use in this proposed spur as

(Testimony of John Franklin Alsip.)

shown on Exhibit A-3?           A. Yes, sir.

Q. From near Wheeler down to Section—

A. Yes, when we built the sugar we were fortunate enough to have some eighty-five and we used it.

Q. You used it. I see. Mr. Alsip, do you still have some seventy-two pound rail on any of the branch lines that you use?           A. Yes, yes.

Q. And do you buy any more of that seventy-two?           A. No, sir.

Q. Why not?

A. As far as I know they don't roll it any more. As a matter of fact I have been told that they won't roll eighty any more.

Q. You can't buy anything less than a hundred then?

A. Well, we don't buy anything less than a hundred twelve and a hundred fifteen now. [376]

Q. Now if you recovered some of this seventy-two pound rail would you use that in any of your spurs?

A. If you are talking about the seventy-two pound rail in the Connell Northern, I'd say no because it isn't relay rail at all.

Q. What would you do with it?

A. We'd put it in the scrap yard and reclassify it and sell it, use it probably in some places where we had to repair or replace seventy-two pound.

Q. Otherwise you'd scrap it?           A. Yes.

Q. Sell it for junk?           A. Yes, sir.

Q. Mr. Alsip, do you know whether or not the

(Testimony of John Franklin Alsip.)

Northern Pacific applied for a Certificate of Public Convenience and Necessity from Interstate Commission in order to build that spur over to the sugar plant from Wheeler?

Mr. Lutterman: Just a minute before you answer. If the Court please, I think now we are really getting to the point where it is objectionable; whether a certificate was applied for, whether one was obtained with respect to any other track is not material here and I have a case which is directly in point on it.

The Court: I am quite confident that it is not. I can't imagine under what theory that would be relevant here. [377] Now if I am wrong I will let you make a showing or anything of the kind, but I just can't imagine how that would be controlling, or I mean relevant. I have a great curiosity about it but I don't think it is relevant.

Mr. Krier: Well it is—it might under some circumstances be considered as a comparable situation. What I had in mind was to ask as the next question, as to whether or not the Milwaukee Railroad had applied for a certificate to build this.

The Court: I don't think it would make a bit of difference whether they did or didn't in either instance. I just don't think it makes a bit of difference under the—I have examined all of these authorities you have cited to me now and I am thoroughly satisfied it doesn't make a bit of difference. However, if you want to make an offer of

(Testimony of John Franklin Alsip.)

proof about it or carry it any further I will permit you to do so, but——

Mr. Eastman: The only reason that we thought that it is possibly pertinent is because of the language of one decision. A spur track is so classified if it is the type of facility that one industry asked for or is permitted to have similar to a service that is being rendered to an existing facility. Now there is particular language in one of the cases that goes to that. We have here a situation where an industry in that immediate territory is being served by a spur track which we [378] regard as comparable to the spur track service which would be rendered to these industries that we propose to locate.

The Court: Let's leave it this way for the moment. If it should develop during the course of your argument that I felt that that was, that I had been mistaken in ruling so, it would be a very simple matter to add that further data to the record, wouldn't it?

Mr. Eastman: Yes. I don't think there is any dispute about the fact I am——

The Court: I anticipate there is no dispute about the fact and if after you have argued the matter and I am more fully informed and I think I am wrong about it or there is some possible theory under which that would be important, I will then let you put the fact into the record. Will that satisfy you?

Mr. Lutterman: Yes.

Mr. Eastman: Yes.

(Testimony of John Franklin Alsip.)

The Court: Very well. For now I will sustain the objection.

Mr. Eastman: I think the defendant will rest.

Mr. Krier: Just before we rest, your Honor, I'd like to check the exhibits to see if we have——

The Court: But you want Mr. Alsip off first?

Mr. Krier: Mr. Alsip is through and thank you.

(Witness excused.) [379]

The Court: Yes, yes, of course. I imagine the Clerk would like to confirm that, too. However, if it should develop there was some inadvertence about it you could correct it later on. I think maybe you can do that after I leave the bench. Then if you find there is something needs correcting in that manner, why we can attend to it in the morning first thing.

Mr. Lutterman: It is my recollection no exception was included.

The Court: I think that they are all in, but I also liked to do the same thing when I was in your position, so I don't criticize you for it and it is a good thing from everyone's point of view.

Now, do you have some rebuttal?

Mr. Lutterman: Very short. Mr. Crippen. [380]

CURTIS E. CRIPPEN

having been previously sworn on oath, was recalled as a rebuttal witness on behalf of the Plaintiff, and testified as follows:

Direct Examination

By Mr. Lutterman:

Q. Mr. Crippen, during cross-examination yesterday you were asked whether you had some sort of a preliminary sketch of a track extending from the existing Milwaukee's track at Moses Lake into Section 13 and you were asked to—and your answer was yes and you were asked to bring the map.

The Clerk: Plaintiff's Exhibit 13 has been marked for identification.

(Plaintiff's Exhibit number 13 marked for identification.)

Q. (Continuing): Showing you Exhibit 13, will you state whether or not that is the map showing a proposed or projected track into 13 from the Milwaukee tracks?      A. It is.

Mr. Lutterman: Do you wish to see it?

Mr. Eastman: Yes, we do.

Mr. Lutterman: I probably should have shown it to them during recess. I simply didn't think about it. I wasn't trying to keep it from them. I have some other questions, but it wouldn't be fair to counsel.

The Court: No; we will just wait a moment. It will [381] only take a moment.

(Testimony of Curtis E. Crippen.)

(Whereupon, counsel for Defendant study Exhibit No. 13.)

Q. Mr. Crippen, I probably misled you or mis-spoke myself. Actually it is not an actually presently proposed track; it is in the nature of just a possibility of building track into that area, is that right?

A. Just an exploratory investigation of what the possibilities might be.

Q. And you have shown two possible lines, is that correct?      A. That is correct.

Q. And, however, there was some engineering work behind it, it is not just simply lines drawn on the map, is that correct?

A. No; it is based on the basic investigation of the facts to determine the feasibility and practicality of such a line.

Q. Including the topography and the grade of the line?      A. That is right.

Q. And those details are shown on the map itself, are they?      A. Yes.

Mr. Lutterman: I would like to offer this at this time. [382]

The Court: Any objection?

Mr. Eastman: No objection.

The Court: Admitted.

(Plaintiff's Exhibit number 13 admitted in evidence.)

Q. The maximum grade, Mr. Crippen, on the

(Testimony of Curtis E. Crippen.)

track—you have discussed these two tracks yesterday—on the longer track is what?

A. Two per cent. It is shown as one point nine eight on the map. I used the figure two per cent yesterday and for all practical purposes that is it.

Q. And when we speak of maximum grade we mean the highest grade of any point on the line?

A. That is right.

Q. And you testified, I think, generally as to the estimated cost of each of the two tracks. Would you state again your estimate of first the longest track?

A. The longest track was estimated to cost approximately \$70,000, exclusive of right-of-way.

Q. And what was the estimate for the right-of-way?      A. \$22,500.

Q. Which would bring it under, as you said, under a hundred thousand?      A. Yes.

Q. And the other line? [383]

A. The construction cost was estimated at \$49,000 and the right-of-way was estimated at \$12,000.

Q. The maximum grade on the shorter line, Mr. Crippen?      A. Four per cent.

Q. And, in your opinion, are those estimates of construction cost fairly accurate?

A. Yes, they are reasonably sound and reasonably representative of what we think we could build the track for.

Q. Mr. Crippen, what is the maximum grade on the main line of the Milwaukee, say in the State of Washington?      A. Two per cent.

(Testimony of Curtis E. Crippen.)

Q. And we have a line extending south out of Tacoma here? A. Yes.

Q. What area generally does that serve?

A. The line south from Tacoma serves four trains running to Morton, Longview, Aberdeen, Raymond.

Q. And what is the maximum grade on that line just immediately in Tacoma here?

A. Three point seventy-five per cent.

Q. Yet you operate your freight trains over that grade daily? A. Oh, yes.

Mr. Lutterman: That is all, thank you.

Mr. Krier: May I see that exhibit, please? May I [384] have just a second?

The Court: Certainly, of course.

Mr. Lutterman: I neglected to show that to your Honor.

The Court: That is all right, that is all right.

Mr. Lutterman: It shows about what he put on the map yesterday in actual scale.

The Court: I have that marked on my copy of Exhibit 5, I guess it is.

Mr. Eastman: 6.

#### Cross-Examination

By Mr. Krier:

Q. Mr. Crippen, what would be the weight of rail that you would use in this estimate that you just stated?

A. We used ninety-pound rail in our present

(Testimony of Curtis E. Crippen.)

estimate for the reason that we have ninety-pound rail.

Q. For the reason that you have ninety pound. You would do the same thing with your rail that Mr. Alsip described that we do, the Northern Pacific does?

A. That is right, we would use second-hand relay rail, whatever is available at the moment we have need of it.

Q. And at the moment you have ninety-pound rail?      A. That is right.

Q. So that is the reason you used it in your estimate? [385]      A. That is right.

Mr. Lutterman: While we are on it, while we are waiting:

### Redirect Examination

By Mr. Lutterman:

Q. You would use the same in branch line construction of that kind?      A. That is right.

Mr. Krier: No further questions.

Mr. Lutterman: Thank you, Mr. Crippen.

Mr. Marshall, please.

That was admitted?

The Court: I believe it was.

The Clerk: Yes, it was. [386]

## JOSEPH E. MARSHALL

having been previously sworn on oath, was recalled as a rebuttal witness on behalf of the Plaintiff, and testified as follows:

## Direct Examination

By Mr. Lutterman:

Q. Mr. Marshall, you have been sworn. You introduced some exhibits, Mr. Marshall, showing carloads in and out for the various years from Moses Lake? A. Yes, sir.

Q. You had one exhibit for the year 1947?

A. Yes, sir.

Q. I wish I knew the number of it. In one column you show fruit and produce?

A. Fruit and vegetable.

Q. Fruit and vegetables and in the year 1947 you show a total of 2,569 cars of fruit and vegetables out of Moses Lake?

A. Yes, that is correct.

Q. Have you since made an investigation in your office files to determine how many, if any, of those cars were apples?

A. Yes, I have. It was nineteen cars.

The Court: That is satisfactory to you?

Mr. Krier: Oh, yes.

The Court: All right. [387]

Q. Mr. Marshall, all this morning did you hear the testimony of, I believe it was Mr. Martin from Pacific Fruit? A. Yes, sir.

Q. And will you state whether or not that is the

(Testimony of Joseph E. Marshall.)

first time you knew they were not interested in Milwaukee property in Moses Lake?

A. Frankly, I was shocked to hear it. My belief was that the negotiations were not concluded and that we definitely were hopeful they would locate on our railroad.

Q. And the last conversation you had had with the representative from the Pacific Fruit was when?

A. February the 16th.

Q. Of this year? A. Yes.

Q. And today was the first you knew they apparently were not interested?

A. Yes; I was shocked.

Mr. Lutterman: That is all. Any questions?

Mr. Eastman: No.

The Court: Anything further?

(Witness excused.)

Mr. Lutterman: Mr. Sedgwick. [388]

## ALFRED L. SEDGWICK

having been previously sworn on oath, was recalled as a rebuttal witness on behalf of the Plaintiff and testified as follows:

## Direct Examination

By Mr. Lutterman:

Q. Mr. Sedgwick, while you were being cross-examined yesterday you were asked whether or not you had any tentative plans or drawings of any kind with respect to development of industry trackage in the Moses Lake area, is that correct?

A. Yes, sir.

Q. You stated you did have some tentative drawings and were asked to produce it?

The Clerk: Plaintiff's Exhibit 14 has been marked for identification.

(Plaintiff's Exhibit number 14 marked for identification.)

Q. Showing you Exhibit 14, will you state what that is?

A. In the upper right-hand corner of this map there is shown in the south half of Section 14, Township 19 North, Range 28 East, a tentative track layout which would serve that area of approximately eighty acres.

Q. That was the area that you were speaking of yesterday in the section?

A. Under discussion, yes, sir. That area is outlined in red on the map. [389]

(Testimony of Alfred L. Sedgwick.)

The Court: It is area "C" on Exhibit 4.

Mr. Lutterman: Yes. You were cross-examining him on Exhibit 4 here.

The Court: Area marked "C" on 4.

Mr. Lutterman: I wanted to offer the exhibit.

Mr. Eastman: No objection.

The Court: Admitted.

(Plaintiff's Exhibit number 14 admitted in evidence.)

Q. The exhibit shows an area outlined in red in Section 14, is that correct? A. Yes, sir.

Q. And by blue lines projected for possible tracks connecting with the existing Milwaukee track to serve industries, is that right?

A. That is correct, yes, sir.

Mr. Lutterman: Does the Court care to see it?

The Court: No, I got a look at it.

Q. Mr. Sedgwick, will you state whether or not irrigation block 41, I believe it is, is the irrigation block generally in the, between the city of Moses Lake and the N.P. station of Wheeler area?

A. That is correct, yes, sir.

Q. And you are familiar with that block?

A. Yes, sir. [390]

Q. And where does Section 13, the one that is shown on all the exhibits here with the proposed N.P. trackage, where does Section 13 lie with respect to that irrigation block?

A. Section 13 is slightly north of the east and west center of irrigation block 41 and the westerly

(Testimony of Alfred L. Sedgwick.)

edge of Section 13 coincides with the westerly edge of irrigation block 41.

Q. And the block then extends east from——

A. The bulk of the area in block 41 is to the east and south of——

Q. Mr. Sedgwick, you heard the testimony this morning of Mr. Martin and Mr. Watson of Pacific Fruit and Produce?      A. Yes, sir, I did.

Q. And will you state whether or not prior to that time you had any knowledge as to their intentions with respect to property in Moses Lake other than as you testified here the day before yesterday?

A. I had no such previous knowledge. It came as a surprise to me that there was some testimony from those gentlemen that a selection had been made without first consulting either Mr. Marshall or myself as had been agreed upon.

Mr. Lutterman: That is all, thank you. [391]

#### Cross-Examination

By Mr. Eastman:

Q. Mr. Sedgwick, on your Exhibit 14 you have outlined in red an area similar in shape to that which you placed on Exhibit 4 yesterday at my request. When was that put on Exhibit 14?

A. This red outline was put on Exhibit 14 approximately two weeks ago, that is, the red outline was put on.

Q. That was at the time that the trackage shown in blue was also put in there?

(Testimony of Alfred L. Sedgwick.)

A. No, sir; that had been put on many months before.

Q. And is the area shown on Exhibit 14 in size the same as the area outlined in red which you put on Exhibit 4 yesterday?

A. Approximately, Mr. Eastman. I did this yesterday from memory and without any other map to guide me and it was the intention to show substantially the same areas.

Q. Well, now, I understood that the trackage layout was put on the map some considerable time before the outlined area was put on it in red?

A. That is right.

Q. What was the purpose of doing the two tasks at different times? Is there any significance to it?

A. None whatever in connection with this case, Mr. Eastman. [392]

Q. What was the purpose of putting the red outline on two weeks ago? Simply in connection with a study that you were making of the matter?

A. That is true. It was to identify the area for other officials of the Milwaukee Road.

Mr. Eastman: That is all, thank you, Mr. Sedgwick.

Mr. Lutterman: That is all, thank you.

The Court: You are excused, Mr. Sedgwick. Anything else?

(Witness excused.)

Mr. Lutterman: There is only one other matter, your Honor. At the time the matter was first presented on our motion for preliminary injunction—I

have rather forgotten whether I filed or just simply handed to your Honor a mimeographed copy of the Interstate Commerce Commission and docket number which has been referred to here which concerned the 1948 proposal. I think it should in some way be part of the record since the full report is not reported in the published volumes.

The Court: The paper that you refer to, I believe, is finance docket number 16119 and apparently is the decision of the Interstate Commerce Commission of that date.

Mr. Lutterman: That is correct.

The Court: It is, of course, a part of our file here in file number 1761, which is this action. Do you desire it to [393] be made a part of the record in some other manner?

Mr. Lutterman: No, just so it is part of the record.

The Court: It is part of the file. It is not part of the record of this trial. Now, if that—I am not attempting to make any distinction, but if you desire it made a part of the record in some other manner, why that is up to you.

Mr. Eastman: We have no objection to it being taken from the file and introduced as a part of the evidence.

The Court: As an exhibit?

Mr. Eastman: In this case.

The Court: Well, let us do that then and it will avoid any possible question about its being properly a part of the record. With your leave, I will remove that item now from the file and hand it to

the Clerk and ask her to mark it as an exhibit and it will then—can be offered and admitted as an exhibit in the case.

The Clerk: Plaintiff's Exhibit 15 has been marked for identification.

(Plaintiff's Exhibit number 15 marked for identification.)

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### PLAINTIFF'S EXHIBIT No. 15

This report will not be printed in full in the permanent series of the Interstate Commerce Commission Report.

Interstate Commerce Commission

Finance Docket No. 16119

Northern Pacific Railway Company Construction

Submitted April 6, 1949.

Decided May 20, 1949.

Present and future public convenience and necessity not shown to require construction and operation by the Northern Pacific Railway Company of a branch line of railroad in Grant County, Wash. Application denied.

L. B. daPONTE, and  
DEAN H. EASTMAN,  
For Applicant.

JOHN F. LINDBERG,  
For the Department of Transportation of  
Washington.

## Plaintiff's Exhibit No. 15—(Continued)

ALBERT T. TITUS, and  
FRED COTTINGHAM,  
For Railroad Brotherhoods.

THOS. H. MAGUIRE, and  
JOHN J. HESSELBROCK,  
For Interveners Opposing Application.

HENRY T. IVERS, and  
B. J. McLEAN,  
For Interveners Supporting Application.

## REPORT OF THE COMMISSION

Division 4, Commissioners Mahaffie, Miller, and  
Mitchell, by Division 4:

Exceptions to the report proposed by the examiner were filed by the applicant and the interveners favoring the proposal and the case has been argued orally.

The Northern Pacific Railway Company, on May 24, 1948, applied for authority to construct a line of railroad from a point on its Connell Northern branch known as Mitchell spur to Moses Lake, approximately 4 miles, in Grant County, Wash. Protests and briefs were filed and a hearing was held. The Chicago, Milwaukee, St. Paul and Pacific Railroad Company, hereinafter sometimes referred to as the Milwaukee, intervened and together with certain organizations representing operating employees on its lines opposed granting the applica-

Plaintiff's Exhibit No. 15—(Continued)

tion. The city of Moses Lake, Moses Lake Chamber of Commerce, and the Moses Lake Grange No. 971 intervened in support of it. The Department of Transportation of Washington intervened in favor of granting the application but at the hearing counsel stated it was neutral in the matter. All points hereinafter mentioned are in Washington unless otherwise indicated.

The Washington Central line of the applicant stems from the main line at Connell and loops in a generally northern direction to Adco, continuing via Davenport to a connection with the main line again at Cheney near Spokane. That portion of the line between Adrian and Connell is known as the Connell Northern branch. There is no passenger service over this part of the branch and freight trains are operated as required. The applicant proposes to construct a 4-mile lateral line of railroad west to Moses Lake from a point on this line about 2.4 miles from Wheeler or approximately a mile from where originally planned and reported in the return to questionnaire. The change would effect certain economies in the cost of construction. The line is to be a standard-gage single track of 90-pound rail with a maximum rate of curvature of about  $5^{\circ}$  and an average curvature of  $38^{\circ}$  per mile. The rate of maximum grade would be 1.4 per cent east-bound and 0.5 per cent west-bound not compensated for curvature. There would be no outstanding roadway structures.

## Plaintiff's Exhibit No. 15—(Continued)

The cost of the project is expected to be about \$215,074. This includes \$10,000 for right-of-way land, including acquisition expense; \$27,294 for grading; \$130,340 for 22,040 feet of main track complete with ballast and 4,000 feet of service tracks at Moses Lake; and \$46,810 for miscellaneous items, including contingencies, engineering, and \$13,000 for freight station facilities at Moses Lake. The applicant reports in the return to questionnaire that it does not anticipate making any charges to road and equipment accounts during the first 5 years after completion of the line. The record shows that outlays involving substantial amounts not included in the construction estimate but chargeable to roadway accounts would be made soon after trains begin operating. Facilities would be necessary for furnishing coal and water and making light running repairs to locomotives while laying over at Moses Lake. A roadway maintenance gang might be stationed there, and housing would be necessary. The applicant also plans to acquire 60 or more acres of land northeast of the city for the erection of warehouses and other facilities for the convenience of shippers. At the time of the hearing it held an option for the purchase of 30 acres for \$25,000. The cost of the remainder of the tract has not been shown.

The proposed track layout at Moses Lake would permit a connection being made with the track owned by the Federal Government leading to the

## Plaintiff's Exhibit No. 15—(Continued)

Moses Lake Air Field. A witness representing the Fourth Air Corps testified that there would be no objection to such a connection and that he personally believed the service of another railroad to the air base would be advantageous. The applicant proposes to operate during the peak of the vegetable shipping season, an evening train out of Pasco for Moses Lake, approximately 81 miles, arriving in time to deliver in-bound business and pre-iced empty refrigerator cars for loading on the next day. Loaded cars would be taken out in the evening and delivered to Pasco on the following day for icing, servicing, and making connections with the regular east-bound fruit train. This train operates on a 48-hour schedule to Laurel, Mont., where connections are made with the Chicago, Burlington & Quincy Railroad. A fifth day delivery is made to Denver, Colo., and Omaha, Nebr.; sixth day to Kansas City and St. Louis, Mo.; and seventh day to New Orleans, La. West-bound schedules in conjunction with the Spokane, Portland & Seattle Railway and the Southern Pacific lines provide for a third day delivery at Sacramento; and fourth day at San Francisco and Los Angeles, Calif.

The area in the vicinity of the proposed line and along the Connell Northern branch is arid or semi-arid. Much of it is devoted to dry-land farming although about 13,900 acres are now under irrigation, water being obtained from Moses Lake and wells. Seasonal livestock grazing is carried on to

## Plaintiff's Exhibit No. 15—(Continued)

a limited extent. These areas and much of the surrounding lands are included in a reclamation development known as the Columbia River project which eventually will provide water for irrigation purposes from the Columbia River and electric power from the Grand Coulee dam. By means of canals, syphons, tunnels, dams, and reservoirs, a part of which will not be completed until about 1952, water from the Grand Coulee reservoir will be brought into the area. About 2,500,000 acres are included in the entire project but three areas, viz., Quincy Columbia Irrigation district, South Columbia Irrigation district and the East Columbia Irrigation district, comprising a total of about 1,029,000 acres, will receive priority preference. Present plans provide that water will be available first to about 29,543 acres in the East Columbia district during 1952. When the remaining 136,644 acres in this particular district will get water has not been shown. The tract of 29,543 acres is bisected longitudinally for approximately 25 miles by the Connell Northern branch. Moses Lake is slightly west of the southerly portion of this area. Except for a grain warehouse at Wheeler near the southern end, it is said there are no trading points, communities, or facilities on this portion of the branch to serve shippers. The record shows, however, that coal consigned to Moses Lake dealers has been received at Wheeler in the past and that more than 80,000 bushels of grain produced in the Moses Lake area also left this station during 1947.

Plaintiff's Exhibit No. 15—(Continued)

Moses Lake, an incorporated city of about 1,700 inhabitants, lies about 4 miles west of the Connell Northern branch and at the end of the proposed line. It is some distance from the geographical center of the entire irrigation project and slightly outside that portion of the East Columbia district scheduled to receive irrigation water in 1952. U. S. Highway No. 10, the major east-west highway leading to Spokane on the east and Seattle on the west, passes through the city. Other improved highways radiate in 3 directions from the city. Common carrier motor truck lines, 4 in number, provide daily-except-Sunday freight schedules and the Northwest Greyhound Lines, Inc., operates 3 passenger schedules daily in each direction. The city, formerly known as Neppel, has been served since 1912 by a branch line of the Milwaukee that connects with the main line at Warden. Freight service is now provided on triweekly schedules. Cars for perishable shipments are pre-iced at Othello about 35 miles from Moses Lake and delivered daily during the peak of the shipping season. Extra trains are put on as required. No passenger service is provided. The Milwaukee line at Moses Lake connects with a track leading to the air field. This base was constructed in 1942-1943 and deactivated shortly after the close of hostilities. It has been on a stand-by basis since 1945 but there are rumors that it is to be reactivated. During each year, 1941 to 1947, inclusive, the out-bound traffic handled by the Mil-

## Plaintiff's Exhibit No. 15—(Continued)

waukee at Moses Lake aggregated 35, 278, 537, 1,004, 1,911, 2,109, 2,574, and in-bound traffic amounted to 29, 661, 2,377, 547, 260, 416, and 484 carloads, respectively.<sup>1</sup> Gross revenues received from all sources during the same years amounted to \$6,081, \$217,446, \$838,907, \$373,782, \$523,156, \$819,705, and \$1,019,043, respectively. A substantial volume of the freight received during 1942-1944 was nonrecurrent traffic destined to the airfield. Out-bound traffic consisting principally of fruits and vegetables, mainly potatoes moving eastward, increased progressively, from 29 carloads in 1941 to 2,568 carloads in 1947. This distribution covered about 39 States and several Provinces in Canada, but many of the shipments were billed to Minneapolis as the initial destination and diverted from that point to other destinations mainly to the east thereof. During the first 9 months of 1948 potato shipments to the more distant markets declined to

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<sup>1</sup>The average number of carloads shipped monthly ranged from a low of 1.8 to a high of 21.4 during the 1938-1942 period; 9.6 to 542.8 during 1943-1947; and 7.0 to 282.1 for the entire 10-year period. Freight received during the same periods, in order, ranged from 1.6 to 62.8; 33.6 to 124.8; and 24.0 to 64.3 carloads, respectively. The peak of the out-bound movement occurs during July and August when the potato crop is ready to market. Fresh fruits and vegetables have been the principal commodities out-bound since 1938, and, except during the war years when an unusual amount of material was delivered to the airfield, the main commodities in-bound were coal, oil, gasoline, and wood.

## Plaintiff's Exhibit No. 15—(Continued)

325 carloads compared with 1,600 carloads during the corresponding period of 1947, and gross revenues dropped from \$833,298 to \$567,015. About 20 per cent of this crop moved to regular markets in 21 different States while the remainder which was purchased by the Federal Government under the price support program was shipped to processing plants and stock feeders in Washington and nearby States.

The applicant's revised estimate of the traffic which it expects to get at Moses Lake shows that for the year April 1, 1949, to March 31, 1950, and for like periods thereafter until April 1, 1957, it will handle 96, 135, 135, 1,681, 2,070, 2,101, 2,018, and 1,752 carloads of freight out-bound, and 32, 44, 249, 225, 235, 264, 267, and 261 carloads in-bound. The former consists entirely of fresh and dried vegetables and canned goods with Minnesota Transfer and Seattle destinations while in-bound commodities are those originating at various points and ordinarily moving into a community the size of Moses Lake.<sup>2</sup> During the same periods the total

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<sup>2</sup>The yearly average number of cars for the second 5-year period and the average per year after the area is fully developed is 1,555 and 1,701 carloads of potatoes; 161 and 413 of onions; 39 and 25 of fresh tomatoes; 39 and 45 of dried peas; and 34 and 212 carloads of canned goods, respectively. Similar averages for all incoming freight are 261 and 610 carloads, respectively.

## Plaintiff's Exhibit No. 15—(Continued)

estimated gross revenues would be \$42,000; \$58,350; \$108,650, \$584,600; \$712,300; \$744,200; \$717,600, and \$638,800, respectively.<sup>3</sup> The estimated net railway operating income is based on the assumption that the entire cost of handling this traffic would be 50 per cent of the revenues derived therefrom.<sup>4</sup> Certain features of this estimate are open to question. When asked to explain how the volume of out-bound traffic for the second and third periods before irrigation water would be available was arrived at, the same being about 30 per cent less than the original estimate in the return to questionnaire, a witness testified it represented cars destined to markets not otherwise reached via the Milwaukee. Dickinson and Mandan, N. D., and Glendive, Mont., were named as typical markets but no showing was made that they have been used by Moses Lake shippers in the past. It was also said to include traffic to certain markets in the southwest because of faster service, but the witness had no knowledge of Milwaukee schedules to these points. Mere statements that certain markets in the southeastern, southern, and southwestern areas cannot be reached competitively by Moses Lake potato shippers because of

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<sup>3</sup>The average yearly gross revenues for the second 5-year period and also after full development are shown to be \$666,200 and \$938,600, respectively.

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<sup>4</sup>Applicant's annual reports to the Commission show that freight operating ratios for each year, 1943-1947, inclusive, were 57.95, 67.51, 86.50, 76.96, and 70.18 per cent, respectively.

## Plaintiff's Exhibit No. 15—(Continued)

slower transit via Milwaukee cannot be taken as establishing that the services of the Northern Pacific are necessary.

Witnesses representing the city of Moses Lake, civic and farmers' co-operative organizations, shippers, and others testified in favor of granting the application herein. It is apparent that the ultimate objective of the proponents is the concentration of all business, industrial, and shipping activities in the area at Moses Lake. A witness for them testified that the idea was not only to maintain the city as a major center for processing, packing, and marketing and also industrial and shipping facilities but also to build it into a distributing hub for retail and wholesale trade because if any other small towns or service centers were to be developed in the area, Moses Lake would be restricted and therefore no one community would be able to offer the residents the complete service they might need. It was also stated that failure to grant the application herein would open the door for the dispersion of industry and shipping over the entire area which they say is undesirable. The territory, in which the city is considered by the proponents to be the only complete trading center, comprises an area within a 20-mile radius. The actual trading area is somewhat smaller. Ephrata and Adrian,<sup>5</sup> stations on the

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<sup>5</sup>Rand McNally Atlas for 1948 shows the population of Grant County is 14,668 and that of Adrian and Ephrata, the county seat, in excess of 1,000 each.

## Plaintiff's Exhibit No. 15—(Continued)

Great Northern Railway about 20 miles north of Moses Lake, are near the edge of this area while a number of smaller communities or stations are within it. It is estimated that beginning with 1952 the production on 43,443 acres of irrigated land in this area should reach about 448,000 bushels of grain; 47,000 tons of hay; 124,000 tons of fruits, vegetables, sugar and by-products and specialty crops; and about 11,000 head of livestock. Other production estimates based on increases in irrigated acreage after 1952 are also shown in the record. The population of Moses Lake is expected to reach 15,000, and an elevator, sugar refinery, canneries, and other food processing plants are expected to establish there eventually. It is with this development in mind that the proponents assert there should be as many means of transportation as possible.

Several shippers testified they could not compete in certain markets with other potato-growing districts because of slower Milwaukee schedules. A grower who shipped about 300 carloads of potatoes last year said that some of his cash buyers refused to deal with him as long as he shipped over the Milwaukee. The witness did not know the kind of service demanded by these buyers or whether the applicant could furnish it, the particular markets to which they failed to get the desired service, or whether the Milwaukee or its connections had failed

## Plaintiff's Exhibit No. 15—(Continued)

in the past. A representative of another dealer shipping from 1,000 to 1,200 carloads of potatoes a year together with others said they could not compete in the southeastern and southwestern markets with potatoes from other districts, particularly if the transit involved movement through the St. Louis, Kansas City, and Omaha gateways. The competition referred to comes from the Yakima and Wapato districts of Washington and some areas in Oregon and California. The rates to southern destinations are about the same from Yakima and Moses Lake but shipments over the Northern Pacific from the Yakima district are said to arrive 2 to 4 days ahead of those shipped over the Milwaukee from Moses Lake. The witness showed that out of 960 cars of potatoes handled by the Milwaukee out of Moses Lake during the 1947 crop season, 21 carloads, all of which were sold on delivered sales, were unusually long in arriving at destination. The service on the remainder that moved east through Minneapolis, Chicago, and other junctions was satisfactory. Out of the 21 cars, 6 showed an incorrect shipping date because, as near as could be learned, they were loaded and billed after the train serving Moses Lake had departed and therefore they laid over until the next day. Many of the other cars moved through the Kansas City and St. Louis gateways presumably so the consignors could get the benefit of those markets. The Milwaukee points out that the normal routing on such shipments would

## Plaintiff's Exhibit No. 15—(Continued)

have been through Chicago where the service would have been faster but which probably would have curtailed the diversion privileges. It was also found that other cars were stopped in transit for partial unloading. It is not improbable also that some of these cars were delayed because of diversion orders being received after they had reached their first destination. This finds support in the fact that only in 2 cases did the Milwaukee handle the cars to destination while the line-haul movement for 19 cars was completed by connecting carriers, 1 of which was the Northern Pacific.

Early potatoes, representing about 60 per cent of all those shipped, are very perishable. Delays en route cause deterioration which gives rise to losses. Producers suffer in such cases if the shipment made by them is sold upon delivery. Minimum loading weights, in accordance with O.D.T. requirements, were blamed for some of the claims during the past season but an improvement can be expected in the future because the minimums have been lowered. Moses Lake shippers contend they cannot compete in California markets with potatoes from the Yakima district because Milwaukee schedules require an extra day. The main reason, however, is the substantial difference in rates that places Moses Lake shippers at a disadvantage. Truck service appears to be satisfactory, as one dealer shipped potatoes over the highway to Sacramento, Calif., and got a 40-hour delivery compared with a much

## Plaintiff's Exhibit No. 15—(Continued)

longer delivery by rail. Motor trucks are used also to bring many commodities, including coal, from Cle Elum, a point on the Milwaukee, and the applicant over 90 miles from Moses Lake, and lumber from points west. Other shippers criticized the Milwaukee because of higher rates to certain destinations, lack of diversion junctions and grain inspection stations, and generally slower train schedules particularly in connection with two-line hauls.

The record shows that as a general rule rail distances from Moses Lake to the more important shipping centers and diversion points on the Milwaukee are shorter than via the applicant's railroad and, except to a few unusual destinations, there is a substantial equality of rates between Moses Lake on the Milwaukee and Wheeler about 6 miles from Moses Lake on the applicant's Connell Northern branch. Where there are differences in the rates, viz., coal with Utah origins, grain to Portland, Ore., potatoes to California points, and a few others, there is nothing in the record to show that any administrative steps have been taken to correct or otherwise change these alleged inequalities or irregularities. There is no assurance that the applicant if it operated into Moses Lake would equalize its rates with those in effect to and from the Yakima district, the principal competitor of Moses Lake producers and shippers. Furthermore, very few, if any, new routes and new markets for Moses Lake shippers would be opened up by Northern Pacific

## Plaintiff's Exhibit No. 15—(Continued)

service. It cannot be said that delays have been above the average or that the Milwaukee was responsible where they did happen. Schedules on all railroads are subject to interruptions particularly when cars are shipped as rollers but there is no assurance that the service which the Moses Lake shippers are requesting and the applicant seeks to render would be any better. The fact that the applicant handled during 1947 over 22,000 carloads of fresh fruits and vegetables originating in the State of Washington does not indicate that it would render to Moses Lake a service superior to that now afforded by the Milwaukee.

More than 23,000 acres of the so-called Moses Lake trading area that will receive water in 1952 adjoin the tracks of the Connell Northern branch. The average distance to the railroad from all points in the area barely exceeds 3 to 4 miles. After irrigation this particular area is expected to produce 237,000 bushels of grain; 98,000 tons of fruit, vegetables, and other specialty farm products; 5,800 head of livestock and also poultry and eggs, most of which would be shipped out. If Moses Lake should become the center of all processing and shipping these products would have to be hauled from some farms as much as 16 miles from the city.

The Moses Lake interveners further contend that the development of processing centers and shipping facilities along this section of the branch is impossible because there are no city water and sewage

Plaintiff's Exhibit No. 15—(Continued)

facilities available as at Moses Lake. The applicant joins in this contention by stating in the return to questionnaire that the cost of developing an adequate water supply and providing means for the disposal of sewage and waste from the plants at some points along this line would be so excessive as to preclude the establishment of processing and canning plants on an economic parity with those at Moses Lake. Although the evidence is conflicting, the conclusion can be drawn that it is possible to establish plants at Wheeler or in the immediate vicinity. The city of Moses Lake obtains its water from two drilled wells that also supply the five or six potato-processing plants there. A drilled well at the experimental farm near Wheeler and about on the same level is now irrigating 80 acres and is capable of providing enough water for 160 acres. According to the Milwaukee this refutes the contention that there is no water available along the branch. Furthermore, a municipal sewage system is not necessary for the operation of certain kinds of agricultural processing plants because those at Moses Lake do not use the system there but like many others throughout the country dispose of their waste by surface run-offs or sumps. Other witnesses, while favoring the establishing of a large grain elevator at Moses Lake, admitted that elevators should be and usually are located at strategic points along a railroad, according to the supply of

## Plaintiff's Exhibit No. 15—(Continued)

grain in the area so as to reduce the farm haul to a minimum.

Representatives of the Brotherhoods of Railroad Trainmen, Locomotive Firemen and Locomotive Engineers and the Order of Railway Conductors appeared at the hearing in behalf of Milwaukee employees and opposed the application for the reason that the pioneering into Moses Lake, having been done by Milwaukee employees, they should continue to serve the city exclusively in the future. The opposition of the Brotherhood of Railroad Trainmen was withdrawn after the hearing.

The Milwaukee argues that the proposal is nothing more than an attempt to invade its territory, and that to grant the application would be contrary to our policy as announced in previous cases. Statistics showing operating results for the past decade were made a part of the record. The mere fact that a carrier seeks to extend its service into an area that has been served exclusively by another does not justify a denial of the application. Carriers have no legal right to exclusive occupancy of a territory and we have permitted additional rail service whenever it has appeared that the interests of shippers required it. *Chesapeake & O. Ry. Co. Construction*, 267 I.C.C. 665. The record herein shows, however, that at present the interests of shippers in the Moses Lake area do not require the service of another railroad.

It has not been affirmatively shown that the ap-

Plaintiff's Exhibit No. 15—(Continued)

plicant can furnish better service than is now being rendered by the Milwaukee. Much stress is laid on the improvements that are expected after 1952 and the extent that Moses Lake will grow. If conditions become such that another railroad is necessary, no sound reason exists why application cannot be made at that time or without permission from us, suitable facilities installed along the Connell Northern branch for shippers who wish to avail themselves of Northern Pacific service. The transportation needs of the three irrigation districts ultimately to benefit by the Columbia River project should be considered collectively rather than as proposed in this proceeding. These districts are served now by at least three trunk-line railroads. As near as can be determined from maps of record the applicant operates about 100 miles of railroad through the easterly one-half of the combined area; the Great Northern Railway, with about 90 miles, bisects the northerly one-half; and the Milwaukee serves the southern and a part of the southeastern sections with about 110 miles of line. The Union Pacific Railroad reaches Connell in the southeast corner, and the lines of the Spokane, Portland & Seattle Railway and the applicant parallel the southern portion along the Snake River. Rail loading facilities, if needed, could be provided for shippers at any number of stations along these lines, including Ephrata and Adrian, which presumably will have the same hopes and aspirations for development as

## Plaintiff's Exhibit No. 15—(Continued)

Moses Lake. The arrangement of providing loading stations throughout the area would be more convenient for hauling products to railroads. The extension of a line into the territory served by any one of these railroads should be deferred until such time as an actual need for additional rail service can be shown.

The Milwaukee contends that granting the application would create unsound and uneconomic conditions in transportation by lowering its revenues, which it can ill afford. The record contains data for each year, 1938-1947, comparing the freight revenue and freight revenue per mile of line for the system and for the State of Washington, and selected system income and balance sheet items and operating ratios for the applicant with its own. It is almost certain that with the applicant operating into Moses Lake, the Milwaukee would handle less traffic through that station, particularly until 1952 when the newly irrigated land comes into production. To what extent the traffic would be divided after that time is problematical. There is the possibility, however, that the applicant might get a greater share of the traffic from the area if it established shipping facilities along the Connell Northern branch supplemental to those of the Milwaukee at Moses Lake.

The applicant cites as a precedent our findings in San Antonio & A. P. Ry. Co. Construction, 111

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I.C.C. 483, and argues that not only are the same factors present in the case at hand but there are additional controlling considerations. The proceeding cited involved applications for authority to construct about 114 miles of line in the Rio Grande Valley of Texas. It is true that there is some similarity as to some of the facts therein with those in this case. But the applicant disregards several important factors present in that situation which are not present in this case. The Rio Grande Valley was served by only one carrier, whereas in the case under consideration the area within the Columbia River project, as hereinabove indicated, now has service available by the applicant, the Great Northern, the Milwaukee, and other carriers named. Because of the location of the tracks there was also the possibility of interruptions of service on the lines of the only carrier serving the Rio Grande Valley, a situation not present in this case. Other factors pertaining to population, volume of shipments, and traffic conditions were involved that differ from the case under consideration.

As was said in *San Antonio & A. P. Ry. Co. Construction*, supra, it is undesirable, if not impossible, to lay down any general rule by which it can be determined whether or not certificates of public convenience and necessity should be issued for the construction of proposed new lines of railroad; and every case must be decided in the light of its own special circumstances. The greater part of the evi-

## Plaintiff's Exhibit No. 15—(Continued)

dence in this proceeding is devoted to showing that there might be a need for Northern Pacific service at Moses Lake if and when the surrounding areas come into full production, which at the earliest will not be for another 3 or 4 years. It has not been shown that there is a present need. The application will be denied without prejudice to the applicant to renew the same at some future date, if and when it appears that the existing railroad facilities are inadequate to meet the then public convenience and necessity.

We find that the present and future public convenience and necessity are not shown to require construction by the Northern Pacific Railway Company of the branch line of railroad in Grant County, Wash., described herein. An appropriate order will be entered.

**ORDER**

At a Session of the Interstation Commerce Commission, Division 4, held at its office in Washington, D. C., on the 20th day of May, A.D. 1949.

Finance Docket No. 16119

Northern Pacific Railway Company Construction

Investigation of the matters and things involved in this proceeding having been made, a hearing having been held, and said division having, on the date hereof, made and filed a report containing its find-



would be available. I don't know how much time you want to argue the matter, but our situation for tomorrow is this, and you can govern yourselves accordingly:

I have got the grand jury showing up tomorrow and we are going to have quite an extended ceremony here tomorrow which, incidentally, if you are here I think you might enjoy. We are having some portraits here of former and more distinguished occupants of this Chair and there will be, I think, quite a distinguished group of lawyers and judges here for the occasion. It won't be lengthy, but I think you might enjoy it. That is at one o'clock tomorrow. Don't feel that you are obliged to attend because of my calling it to your attention. At one o'clock tomorrow. Then I have one, two or three other matters [395] set in the afternoon, pretrial and whatnot, so to make a long story short, I think I would like to dispose of this matter in the morning.

Now, if we were to start at nine-thirty you would each get an hour of time with a little recess out would bring us down to about eleven-thirty or such a matter and I should think ought to be ample time. I will, in the meantime, have carefully examined all the exhibits which, of course, I already have closely examined as we have gone along. I will also have fully in mind all the authorities that you have cited in your memoranda and with that background I should think you ought to be able to present the matter in that length of time.

Mr. Eastman: I think an hour would be ample.

The Court: So an hour a side will be allotted for the argument. Now, is there anything else for the good of the order before we conclude today?

Mr. Eastman: We had one matter that we called to your Honor's attention, I think, on the second day of the trial, with respect to viewing the——

The Court: Viewing the property. Well, my own feeling about that, Mr. Eastman, is that the matter has been so thoroughly covered by the material that is now in the record that I feel as though I have a pretty good knowledge of this area. Of course, it would be a little more pinpointed if I [396] went there for this particular purpose. Of course, I have been in this area many times in the past. I rather think that it is not necessary. However, let's defer that again until the argument. If it should develop at the end of the argument that there was some feature of the matter that required my going over there, why I will, of course, go. On the other hand, if that doesn't arise, then we would not delay the matter by that because, of course, if I were to go, I think it would be just impossible to do it now before I am going to be away from the district. But we won't let that interfere. If that seems to be an important factor, I will go because I want to give this matter the fullest attention that it deserves and you may be sure that I will do that even though it requires some delay.

Mr. Eastman: We are perfectly satisfied with that arrangement, your Honor.

The Court: Anything further now for today?

Very well, we will adjourn for today and convene tomorrow at nine-thirty a.m.

(Whereupon, Court was adjourned at fourteen o'clock p.m.) [397]

February 26, 1954

The Court: Very well, gentlemen, are you ready to proceed with the argument in No. 1761? Is there anything further to be added to the record?

Mr. Eastman: We would like to reserve the right, your Honor, at the conclusion of the argument, to renew again our offer of proof or stipulation in the record with respect to the sugar plant, that no certificate was——

The Court: Well, I will tell you, it will just take a moment. I mean, it is a short matter for you to state, isn't it?

Mr. Eastman: Yes.

The Court: Why don't you state it now and have it behind us? I will adhere to my previous ruling but I will allow you to make the offer of proof.

Mr. Eastman: I think it may be stipulated, may it not, Mr. Lutterman?

Mr. Lutterman: I am not going to stipulate on it at this time.

The Court: I frankly don't—I am telling you now I don't regard it as material and I certainly don't intend to, as I now advise, give any weight to that factor in deciding the case. But I certainly want you to make a full record on the matter and you have a right to do that. You can do it now or

at the completion of the argument, whichever you prefer. [400]

Mr. Eastman: Well, so long as we can get it in the record we will do it at the conclusion of the argument.

The Court: Either way, but I will definitely allow you to make a record on it although, of course, you might persuade me otherwise in the course of argument. I don't mean to indicate my mind is completely closed, but I have given a lot of thought to it so I am not just acting "off the cuff," as it were.

Mr. Eastman: Well, we will make the offer then at the conclusion of the argument.

The Court: Very well. We may be just a little bit interrupted from time to time. Don't let it discourage you. We have got rather a big show going on here today. We have got the grand jury in session and they may need instruction from time to time, as I told you before. We have a considerable number of other things, but I am prepared to give full attention to your presentation of the matter now. I'd like you to confine yourselves, however, and, incidentally, you don't have to use the whole time simply because I have allocated it to you, of one hour because that would give us just enough time this morning. Now, if something should develop that it needed additional time, I would consider your applying for it, but I don't see anything that requires it, at the moment. You may proceed.

Mr. Lutterman: May it please the Court, counsel, I [401] feel that your Honor has paid very close attention. I think the issues are rather narrow. I

think that they have been pretty well drawn. I know your Honor has given consideration to the memoranda, which have been submitted, but I felt it might be helpful just to give you a few of my ideas with respect to the issues and the evidence as bearing on those issues.

I think it is interesting, in the first place, to note the early history of the communities of which we are now speaking. The evidence shows that the defendant went into the Grant County area sometime in 1910. It established stations on its line which it felt were at strategic points, including the station of Wheeler.

The plaintiff went in about the same time and completed its line in 1912 and shows as one of the stations on its line and as the terminus of its branch extending from its main line a little way away at Warden, the town which was then known as Nepell, on a lake which has always been known as Moses Lake.

The evidence indicates that from that early time there were—it was really pioneering insofar as the railroad was concerned and insofar apparently as the peoples in the community were concerned. There were few shipments. I think the testimony shows a few carloads from time to time of carp out of the lake. [402]

The Court: Carp?

Mr. Lutterman: Carp, yes.

The Court: Yes, apparently, but never heard of anybody using it for anything but fertilizer.

Mr. Lutterman: There is a market in New York for carp.

The Court: Oh, yes, they make kosher fish?

Mr. Lutterman: Yes, there is a market for carp.

The Court: All right, excuse me, go ahead.

Mr. Lutterman: There was also a small amount of other production in the area. However, it is also significant that there was no appreciable population in the area from the early times up until commencing really in the 1940's. It is also significant that irrigation is not something just new to this community of Moses Lake. As the evidence indicated, as early as in 1929 the Moses Lake Irrigation District was formed for the purpose of irrigating lands in the Moses Lake area and this, of course, was long before the Columbia Basin project in its present scope was even formulated in anyone's mind.

There was some irrigation. However, as I say, there was not any very substantial production. The records indicate, the testimony indicates a small amount of production. In the 1940's, however, the evidence shows first in 1942 the Larson Air Force Base was established near the town of Moses Lake and this gave some impetus to the growth there. However, [403] more significant than the Larson Air Force Base or any other single factor was the fact that commencing about that time the irrigation district, the Moses Lake Irrigation District really came to life at that time. Thirteen thousand acres became included in that district and at that time, as the records indicate, for the first time the people in that area were commencing to grow produce,

largely potatoes and onions, to the extent that by the year 1947 the production of potatoes and onions in the area—now this is six years before any water from the Columbia Basin project came into the area—reached such a peak on these thirteen thousand acres in the district, which, as has been testified, lay in this general area south and east and also to the west of Moses Lake it is. So that by the year 1947 there was already a production which accounted for over twenty-five hundred cars of out-bound produce of that kind.

It was, and, by the way, during all this period of time the station of Wheeler, which the Northern Pacific had selected, did not grow in the same proportions or in the same manner and, as a matter of fact, as the pictures, which are in evidence, indicate, it is still largely a railroad station with railroad buildings and loading facilities, but has never developed into a trading center of the proportions which Moses Lake has developed into.

It was then—then when this production began showing— [404] that the defendant, Northern Pacific, first cast its eyes towards Moses Lake and it acquired the options for or title to the necessary right-of-way to construct a track shown in red on Exhibit 4 and acquired title to or options for the purchase of the area shown in yellow on that map for the purpose of developing an industrial area in the immediate vicinity of the community and the trading center of the town of Moses Lake proper.

At that time the proposal was submitted to the Commissioner for a Certificate of Public Conveni-

ence and Necessity. It was shown that they had acquired options for this right-of-way as well as for this property, that this property at that time, property shown in yellow here and in the immediate vicinity, was undeveloped, that is, there were no industries there at that time.

Part of it happened to lie within the City of Moses Lake, but by actual area a greater portion actually lay outside of the City of Moses Lake itself.

The proposal was simply to develop that particular area as a new industrial area for the community or to serve that general community. At that time it was not proposed to serve any then industries served by the Milwaukee.

The testimony, as is indicated in the report of the Commission concerning that matter, very much followed the lines of some of the testimony introduced in this particular proceeding. [405] There was testimony as is indicated by the report that the Northern Pacific felt that in order to participate in the business not only of the production in that area but also to participate in the business of the trading center of Moses Lake itself, it was necessary for it to extend its line towards Moses Lake.

As is also indicated in the report, there was some testimony in support that somebody, there were people that wanted the N.P. in there. There were people at that time who felt they would prefer the N.P. service. There were also people, which is generally true in any community, that would like to have as many railroads as they could possibly get

in to serve the community, and I don't blame them for that. But that is the natural thing for any community. However, the Interstate Commerce Commission held after full consideration of the matter that the public convenience and necessity did not at that time require the services of this additional line, that the N.P. had no God-given right to come into that immediate area on the claim that it was necessary in order to serve the producing area.

The Commission denied the application and held in effect that the Columbia Basin project as such encompassed a tremendous area including several counties and, as has been testified, ultimately including over a million acres, that the whole project then was served at various points by [406] various railroads. Some of the points like Ephrata and Quincy were served only by the Great Northern, some like Moses Lake were served only by the Milwaukee, some like Wheeler and other stations were served only by the Northern Pacific, other points served even by the Union Pacific reaching even down into, towards the Pacific coast area of the Northern Pacific, some places like the little town of Warden on the main line of the Milwaukee and the branch line of the Northern Pacific happened to be served by two railroads.

The Commission pointed out that under those circumstances it was not in the public interest for one railroad to raid some territory that happened to develop and redound to the benefit of some other railroad. In other words, they are all in this tre-

mendous area. They all have strategic locations and as the Commission pointed out, insofar as the Northern Pacific was concerned, they had their line there which had already existing stations on it. The Commission even pointed out Wheeler, some of your other stations, if it is desired to install facilities at those points, certainly that is entirely proper. But we are not going to let you go down to Moses Lake, which is the Milwaukee's city, because public convenience and necessity were not shown to require it.

Of course, as the Commission points out, if it should find that public convenience and necessity required it even though a place is solely served by one road, it [407] nevertheless will not penalize the public just for the benefit of one railroad. It will permit the other extension but only when there is a showing of public convenience and necessity and as the cases clearly point out, that is an issue that must be decided under Congressional acts by the Commission.

Following that application the testimony shows that the N.P. did that, establish shipping facilities on its existing line. Testimony of your own witness indicates at Barham facilities were established, that is in the Columbia Basin area in the producing area. At Rauquist substantial facilities have been installed since that time for the processing and shipping of potatoes and onions and produce of that nature grown in the area as well as facilities for handling fertilizers and other commodities which might be used in connection with the production.

There have been since that time also additional facilities constructed at Wheeler. There were some existing facilities at that time, but primarily for grain. Since that time there have been warehousing facilities for produce at that point and again at Mitchell's spur, which is just beyond the station of Wheeler, additional facilities have been installed.

Apparently the Northern Pacific has not been satisfied with that and what seems to me to be an almost open [408] defiance of the Commission's attitude in the matter, it now proposes to build another line which is shown in blue on the map extending from its Connell branch to Section 13.

Discussing first the physical aspects of this new proposed line, particularly as it relates to their 1948 proposal, in the first place the take-off point is not at Wheeler in either case. In the second place, however, the take-off point is roughly only a mile apart from the 1948 and the present. Oddly enough when they get up to Section 13 they come within less than a quarter of a mile of each other. At that point, however, in the 1948 proposal they intended to go into Section 14 to develop an area, as I say, a new area, partially in but also partially out of the city limits.

In their present proposal instead they have gone into Section 13, which, while it is not now in the city limits, actually the corner is on it and, incidentally, it lies almost wholly within the power of the Northern Pacific to have that in the very near future included within the city limits if that is of any significance. But the new area which they pro-

pose to go into, as I say, is adjacent to their 1948 proposal and actually insofar as the business center and the trading center of the community itself, it is just as adjacent, just as contiguous and, as I will later point out, will have the same effect as their 1948 proposal. [409]

Another interesting thing is that both lines are approximately four miles in length. That is the running tract what has been—Mr. Derrig finally admitted on his last cross-examination that the blue track would be in the nature of a running track. Now with respect to the cost of the two, while I don't think any of these are determining factors, I think that they are all factors which your Honor must have in mind in reaching his decision.

It has been testified that the 1948 proposal including the terminal facilities, including the terminal property, that is the options and the cost of the terminal property as well as the right-of-way, was something like roughly \$215,000. Now the testimony is that the construction cost of the blue line, the present one, is roughly \$205,000, but that includes only the blue track and it includes right-of-way only up to Section 13 and it does not include in any way the value of the property to be served.

And here is the most important thing. As shown on Exhibit—I believe it was No. 12, yes—I don't think your Honor has had an extra copy of this. Perhaps he has had the opportunity of seeing it. Rather reluctantly we got the information as to their intention with respect to the ultimate development area in Section 13. Look at these proposed

tracks. Of course, they are not already in or anything of that kind, but it represents the thinking of the Northern [410] Pacific. It obviously represents the, their intention in developing this area. The tracks which are shown on here, roughly come to two here, that is a mile and a couple more. That is another two miles of track. In addition, as Mr. Derrig testified, even these tracks would be considered as running tracks and in order to serve industries there would have to be, and it was planned, room was left for two additional tracks running off of each of those tracks shown on that exhibit.

In other words, they are talking about six miles of track in addition to the blue track in 13 to develop this area. They are talking about, according to Mr. Derrig's own estimate at \$8.00 a foot, of over a quarter million dollars in trackage alone in this area. In addition, as I say, that includes no value for the property of the terminal area. It includes nothing for the development of public utilities, of water, light and such as that, and as I say, on top of that we have this estimated cost of the blue line. So what they are talking about is development of about three-quarters of a million dollars. And one of the most—another very significant thing, it seems to me, was the testimony of their traffic witness to the effect that sure, they intend to put a team track in there whenever it economically is justified and actually, if they are permitted to build this track I assume that that would carry with it the right [411] to build a team track, and as he explained to your Honor, the purpose of the team track is to provide

a public loading facility or unloading facility for industries.

The Court: When you get to a good point.

Mr. Lutterman: I will stop with the end of this sentence.

The Court: I have in mind you are talking about the development of that and what they propose for it.

Mr. Lutterman: Thank you, your Honor.

The Court: It will only be just for a moment. Bring the ladies and gentlemen in, please.

(Whereupon, the grand jury entered the courtroom and other matters were considered for a short period.)

The Court: Very well.

Mr. Lutterman: Discussing first some additional physical characteristics, Mr. Alsip, the General Manager, said this is a typical spur, no station, no agent, no passenger, no baggage and so on and so forth. While these matters are not necessarily controlling as his Honor knows from reading the cases, because those were present in every case that is cited in our memorandum, nevertheless, if there is any significance I think it is significant that actually the rail they are going to use there is heavy rail. Sure, he said, because it is available. It is much heavier [412] rail than they have in their branch to Schrag. At Schrag they don't have passenger service, they don't have baggage, they don't have telegraphic service, they don't even have a station, they don't have an agent. He also ad-

mitted the service there is performed identically as they propose to perform it here. It is a tail track or a branch that takes off of their branch and they go up and take cars out and bring them back just exactly like they propose to do here.

They have an eighty-foot right-of-way which is a pretty good right-of-way and ordinarily we, it certainly is a substantial area. Physically, actually there isn't any difference between the blue track and any other piece of branch line. They propose to serve this industrial area in 13 in the same manner they serve other points on their line typically in the immediate area of their station of Schrag.

Comparing that with their 1948 proposal, this is really a proposal for a terminal facility on a much greater, grander scale than they proposed in 1948.

Leaving now the physical characteristics and coming to the economics of the matter, it is, as I say, significant that in 1948 there were no industries where they proposed to go. Of course there are no industries where they now propose to go. In neither case did they propose to directly serve an industry then served or an area then immediately served by the Milwaukee, but in each case their purpose is to [413] get down to the trading center and the populated area of the community of Moses Lake itself.

Mr. Moore's testimony it seems to me is very significant. While he was somewhat reluctant, he finally did admit that they were already trying to get industries interested in that area. He finally did

admit that if they did get tracks in there it would be his purpose to solicit all kinds of industries including industries such as distributing companies, wholesale groceries, wholesale beer, wholesale fruit and produce, people who would distribute and would be normally interested in locating near a developed trading center and population center, and the most significant thing in all his testimony is the fact that he has stated in his affidavit on file herein and also in his testimony, is that if the Northern Pacific does not get its tracks there the industries of which he speaks might very well, and I say normally would, locate in areas already served by the Milwaukee Railroad.

In that connection in Mr. Sedgwick's testimony he has pointed out these various available industrial areas. He has also testified, and I think from his testimony as to his experience in connection with these matters, his forecasts are reasonably reliable, that there already are substantial areas available which could already be served by existing trackage, that the Milwaukee actually is trying to keep [414] ahead of the demand at all times, not only try to supply the demand, but is anticipating at all times that in addition there are substantial privately-owned industrial areas, that normally the types of businesses which Mr. Moore finally admits they would normally try to solicit, normally they would try to locate in or close to the trading center or populated center of Moses Lake, that normally if the track is not in 13 these industries would locate in the presently available industrial areas.

Mr. Sedgwick also testified that for the present foreseeable future demand for industrial expansion there was more than sufficient property not including Section 13. In some ways it would seem a shame that where you have a community which is developing normally, where you have an area which has in so far as it is within the city limits been zoned as industrial and set aside for that purpose, that another area which has been set aside and designated for farming by the Bureau should be opened up to the tract away from the normal development in the, in the city and in the other areas adjacent to it.

Now let's see just—also, we have very definite proof here as to just how this will affect the Milwaukee. They first talked about this one wholesale grocery and they sort of backed away from it because it now appears that the beer account they were interested in for that area, that is [415] that grocery, now is held by some other person and the testimony is that he is not interested in locating in that area and actually is looking at areas where service is already available. Obviously, if they get the trackage in there they are going to solicit him or anybody else of that kind who wants to come in to serve that trading center.

Mr. Moore so admits. The metal man, Mr. War-sincke, says that he looked at some Milwaukee property but he has picked out a site up there which he prefers. If trackage isn't in there it may well be, if he wants to locate on the N.P. he could go to Wheeler, the same as if he wanted to be on

the Great Northern he could go to Quincy where the Great Northern serves the area, but it is entirely possible he might otherwise locate in the areas which normally will develop in industrial areas in connection with the development of this community.

Now we come to the Pacific Fruit and I say frankly to your Honor that as the witnesses explained, after the testimony of their representatives they expressed some surprise and I certainly—we weren't trying to say something which wasn't true. It was a surprise to all of us when some of their representatives indicated that they actually preferred and if available would like to select a location in 13. The fact is, however, that they have been looking at Milwaukee property. They have indicated that the matter [416] has not been closed and the fact is that no doubt if they are not permitted to locate in 13 they will locate either in the other industrial areas available or if they want to be on the Northern Pacific and if, as they try to intimate in some respects it doesn't make any difference where they are, they certainly can go over to the Northern Pacific tracks.

It is interesting, however, and while I don't think it is material to the issues here, all this traffic testimony about their rates and one thing and another and stop to unload and all that sort of thing, that properly goes into a commission case where you are talking about convenience and necessity, but it is interesting to note that at the present time the facility from which they serve the area is not served by the Northern Pacific. It is in We-

natchee and served exclusively by the Great Northern. But, as I say, that certainly is not material.

They do admit, everyone finally, that while they are interested in the processing of the vegetables produced in the area, nevertheless they are also interested in putting in a distribution plant and while some statement was made about it being in a strategic location with respect to the production, as the testimony shows 13 is actually on the boundary of the irrigated district. Your big district is away from—and Wheeler actually is more central to the producing area, and when he is talking about three miles, no one can [417] depend on land within that area if they wanted to produce potatoes in a big way. But anyway, it is significant that they are interested in the area and that in so far as we are concerned anyway, they still are interested in locating on the Milwaukee and, as I say, it is entirely probable that if they, the track is not built that they will, if they want to locate in the Moses Lake area, will locate on the Milwaukee. How is that going to hurt us? There is the most concrete example. The testimony is that last year even though they didn't have a warehouse they actually did ship out over a hundred cars over the Milwaukee, the Pacific Fruit did. And also potentially the exhibit which they introduced of their inbound, the Northern Pacific, they have inbound freight here which is for distribution in the immediate area there of over \$38,000 to \$39,000 and

they show an estimated outbound shipment of \$130,000.

Now that is—if that is permitted there is at the very least this immediate loss of a hundred cars that we had in the year before and certainly this very substantial potential loss of traffic just from this one industry, and again I think without belaboring the point, the thing is they are not building a track down here to serve the Pacific Fruit or to serve any other particular industry. They are building a running track, an extension of their line, if your Honor please, down to Section 13 for the purpose of [418] developing a very, very substantial terminal area and terminal facility adjacent to the City of Moses Lake, and again, as I say, the fact that it is not actually in the limits makes no difference. They have it entirely within their power practically to incorporate if it seems so desirable, and normally in view of the testimony as to the population growth, it is entirely possible if not probable.

I think the testimony also indicates that the Milwaukee has had a long hard road down there on this branch, not only on this branch but on its whole line in that area. On the main line even the density of traffic is comparatively light. That this area actually is the only area which it now serves which is tributary to its main line in all of eastern Washington as against the other areas as shown on the maps, producing areas served by the Northern Pacific and other lines. It has been a long pioneering process to maintain this line into this com-

munity. Fortunately the Milwaukee built in Nepell, now Moses Lake, and not into Wheeler. They pioneered it for all these years. It has now developed. It is now beginning to pay off and even yet, as the exhibits show, the traffic is predominantly seasonal. It is predominantly outbound so that even with the present traffic it is still in the nature of a margin operation.

As Mr. Crippen testified, any loss of our [419] present revenues or any jeopardy to the future development in the area would seriously affect the operation of this branch line. And of course, that is the reason why we have the law that we have, that while offhand it may seem from our competitive point of view, well let everybody get what they can, yet if somebody in getting what they can takes away from somebody else and if that hurts that other carrier to the point where it might affect its ability, it becomes a public charge. In other words, it is a loss to the public and a railroad in order to exist and to give proper public service must be permitted to retain the traffic which it has developed and when, and only when, there is a decision by the Commission that the public convenience and necessity which is always paramount to the selfish needs of either of the lines, when and if that should require it, then the Commission is the body which is authorized to permit such an extension.

I shan't discuss the cases case by case with your Honor because I know he has read them and probably understands them better than I do. However, I think it is significant that in all these cases the

track or for instance many tracks in which it was held that it was an extension were substantially shorter than the blue track here. Some were longer. The significant thing is that wherever a railroad intends to build a track each to a new area which is in an area already served by its competitor, [420] and even though they are actually serving the same city in some cases, but lots were within, but there was an area which was more or less tributary to the other line and the other line wanted to build in a new area and the Court has held that although it may, the proposed track may have all the common characteristics of what we commonly refer to as industry track, nevertheless where the effect is the invasion of an area already served by an existing carrier, then it is an extension of the line within the meaning.

I also wish to point out as I have pointed out in our brief, that the exception is the part that is to be strictly construed and the burden under the cases is one, is on the party seeking to come within the exception, and it seems to me that wherever there is the slightest doubt and wherever there is a proposal such as this which is not simply a track to serve one development but a running track extending four miles to the city limits of a community now served by another line with the intention of developing an industrial terminal facilities of over half a million dollars, it would seem to me that there couldn't be much question certainly as to its being not simply a track to serve an industry, it is an

extension of its line for the purpose of developing and serving a new industrial area.

It is also significant that even in the cases which I have pointed out in some of the Commission cases in my [421] memorandum, even where there is an extension into an area even though there is no other carrier complaining, where there is to be a new development in a new area, that even in those instances the Commission has held that it is an extension of the line where you are going out to develop a new area which requires a certificate.

I appreciate very much the consideration your Honor has given us in this case and I will reserve what little time I have left for rebuttal.

The Court: About ten minutes left if you wish it. Very well, do you want to recess now or do you want to wait awhile?

Mr. Eastman: It probably would be better to recess.

The Court: Take a few minutes. Yes, I think so, because otherwise I might have to interrupt you.

(Whereupon, at ten-twenty-three o'clock a.m. a recess was had until ten-thirty-five o'clock a.m., at which time respective counsel being present, the following proceedings were had, to wit.)

Mr. Eastman: If the Court please, in this case the record is somewhat voluminous. There are a great number of exhibits. There has been a great volume of testimony. It will not be my purpose to attempt to review all of the evidence. It was ap-

parent to me that the Court well understood [422] all of the testimony and has a clear understanding of the physical facts from comments that were made during the course of the trial.

At the outset I wanted to say that I do not agree with him, of the conclusions that Mr. Lutterman has drawn from the testimony. I cannot, however, attempt to answer those conclusions that he has drawn or to review the testimony that he has reviewed. I think the Court has a good understanding of it, but will confine my argument to the question of the legal aspects of this case, whether or not under the facts in this case this proposed track is an extension or a spur.

The action, of course, resolves itself and involves the provisions of, certain provisions of the Interstate Commerce Act, particularly Section, or Paragraph 22 of Section 1 of the Act which provides that the authority of the Commission with respect to the granting of a Certificate of Public Convenience and Necessity shall not extend to the construction or abandonment of spur, industrial team switching or side tracks located or to be located wholly within one state.

Now that provision of the law was enacted as a part of the Transportation Act of 1920. Prior to that time there were no provisions with respect to the necessity of public convenience and necessity and spur tracks were built [423] as occasionally required off of all lines by all carriers. I think it must be conceded that in the ordinary sense this track which is proposed to be built is nothing more than

a spur track to serve industries that desire to locate in a certain area. I suppose that unless the Milwaukee had a line here and a construction such as this was proposed, no one would suggest that it was anything other than a spur track, or if the Pacific Fruit and Produce Company desired a location over in this area and from our station of Wheeler or any other place on our Connell Northern, we proposed to built a spur over to serve this same type of trackage, that there would be any contention by anyone that it was other than a spur track.

Now the situation becomes different in connection with that type of a track as the Courts have construed that provision of the Act only when that type of a spur track which in the ordinary sense is a spur track which extends into new territory that is not already served by the carrier or by means of that track, an attempt is made to invade territory already adequately served by an existing carrier.

Now that is the substance of the holding in the case which has been referred to by counsel and by the Courts in decisions following the enactment of the Transportation Act of 1920, in the case of Texas and Pacific vs. The Gulf and Santa Fe. [424]

I will refer to that case, Texas and Pacific vs. Santa Fe, which is included in our memorandum and, of course, with which the Court is familiar. That case was decided in 1925 and was the first Supreme Court Declaration after the adoption of the Transportation Act of 1920.

Now in the brief the Milwaukee relies basically upon that case. By its pleadings it attempts to bring itself within the principles of that case. I appreciate that the Court has probably read and re-read that case, but to—for the purpose of presenting my argument and comparing the points involved in that case, the factual points with the facts that we have here, with the Court's indulgence I want to read a portion of that decision, and what I am reading has to do with facts stated by the Court in the opinion itself.

“The facts on which the Santa Fe contends that the proposed line is merely an industrial track are undisputed. Dallas is a large interior city. The Texas and Pacific extends through it and beyond in a general westerly direction; the Santa Fe in a generally southwesterly direction. Both lines have been operated for many years. Along the Texas and Pacific commencing at a point two and one-half miles west of the city and extending [425] westward about two and one-half miles farther lies territory known as the industrial district. To its development the facilities and services furnished by the Texas and Pacific have been essential. In it are cement works, oil refineries and metal works. The traffic moves in carload lots. All of the industries are either located on its right-of-way or connect with it by spurs. To serve the plants that carrier has long switches and assembling tracks. No other railroad has any direct connection with any of these industries. Their traffic from or destined to the Santa Fe or other lines is interchanged by the Texas

and Pacific at points on its line distant from these industries from twelve to thirty miles. Thus the Texas and Pacific receives either the whole or a part of the revenue on all of the traffic of the district, the richest freight producing territory in all Texas.”

Now that situation, all of these industries that were there involved were presently served by the Texas and Pacific. All of the other carriers that entered into Dallas [426] could reach those facilities by delivering their cars to the Texas and Pacific on interchange tracks and they ultimately would reach those industries. The Texas and Pacific got a portion of the charges for those services by virtue of performing the switching service.

“The Santa Fe has no branch line running near to, or in the direction of, any part of the industrial district. Hale is a station on its road. The proposed line is to begin at Hale, where storage and assembling yards are to be located, and is to end in the the industrial district near the Texas and Pacific right-of-way. The air-line distance from Hale to the proposed terminus is only three and a quarter miles; but the length of line is seven and a half miles, besides spurs, sidings and other subsidiary tracks. The greater length is necessitated in part by topographical conditions. These are such that the cost of construction is estimated at \$510,000.”

Now this decision was in 1926 and the proposed spur, the proposal to construct the spur arose in 1925. That is the reason that we introduced testimony to relate the expenditure that the Court was

here concerned with with present-day prices. [427] If we, if the Court was speaking today he would be talking, they would be talking about an expenditure of way in excess of a million dollars, probably a million and a half dollars.

“There is to be one undercrossing, where the new line intersects an interurban line, another where it intersects a highway. There are to be two small trestles and numerous fills and cuts. In some respects the character of the construction is that commonly used for industrial tracks. No intention appeared to ballast the track save in stretches where the material was bad. Second-hand seventy-five pound rails, lighter than those commonly used by the Santa Fe, are to be laid. But these are heavier than those used on some of its branches. The ruling grade of the Hale-Cement Line is that prevailing on the Santa Fe branch line running out of Dallas to Paris and Cleburne with which it is to connect.

“No industry is now located along the proposed line between Hale and the Industrial District. The territory adjacent to that part of the line does not now produce any freight tonnage. The Hale-Cement Line was [428] projected by the Santa Fe in order to reach on its own rails the six plants within the district which lie south of the Texas and Pacific Railroad. These furnish eight per cent of the traffic of the district.”

Now there was a proposed extension by means of which the Santa Fe was attempting to tap industries already served and which had been served for

a long period of time by the Texas and Pacific. Now in that situation the Court held that the track was an extension. It did it because, as I have pointed out, it was an extension by the Santa Fe into new territory and it invaded territory which was—and tapped industries which were already being served by spur tracks in existence by the Texas and Pacific.

Now in an attempt to bring themselves within that decision, the pleadings in this case are significant. The Milwaukee alleges that the territory sought to be reached by said extension of defendant's line, is adjacent and tributary to the territory now served by the Milwaukee Railroad. They allege in that same paragraph 5 of the complaint that the construction of the track only would result in invasion of the Milwaukee territory. They allege the expenditure of large sums of money, that it would deprive the Milwaukee of revenues which would normally accrue to it, that in the I.C.C. proceedings in 1948 the Northern Pacific sought the [429] extension in substantially the same territory as the extension now proposed. Then also the further allegations were made that the defendants intend to induce industries now located in Moses Lake to move to Section 13 and to induce shippers to locate on Section 13 who would otherwise locate in Moses Lake.

Now if that allegation is sustainable factually, it clearly has no merit. That argument could be made if Northern Pacific owned this section of land and attempted to locate the Pacific Fruit and Produce

Company here and Mr. Warsinske here. The same argument would prevail because the evidence makes it clear that this entire territory is subject to industrial development, that is to the location of industries, the desire to locate in this area for the processing and other handling of the products in the area.

Now that same argument could be made with respect to an industry, the Pacific Fruit or Mr. Warsinske if we attempted to locate them here. It is true that some of these industries the Milwaukee is anxious to locate in Moses Lake, probably all of them that we have already located on our line the Milwaukee is interested in locating in Moses Lake, but there is no proof in the record at all that any industries now located in Moses Lake has even been approached by the Northern Pacific. There is no evidence in the record that we have endeavored to induce any industries which might [430] otherwise locate in Moses Lake to locate on Section 13. Mr. Warsinske, for example, first went to the Milwaukee and they apparently were not very much interested in his proposal, but in any event ultimately he came to the Northern Pacific and asked to be located on Section 13.

Pacific Fruit and Produce also talked to the Milwaukee but it has no desire to locate in Moses Lake. The testimony on that is positive and the reasons for it are plain. The character of an operation of the Pacific Fruit and Produce Company intends to engage in is not well located within a town like Moses Lake. They don't want to be in Moses Lake. So

there is absolutely no proof of those allegations and, as I say, if they were factually sustainable, it has no merit.

There is no case that I know where the Court has even considered that type of a competitive situation as preventing one carrier to build a spur track to serve industries that may desire to locate upon its line.

Now, returning to the Texas Pacific and Santa Fe case, I want to point out a few things in that case which clearly distinguish the situation there involved from what we have here. In that case the area which the Santa Fe sought to serve had been developed through facilities and service of the Texas and Pacific which was rendering adequate service by direct connection with each of the [431] industries therein involved. Here the two new industries are not served by the Milwaukee. They desire to locate on Northern Pacific property where they can get Northern Pacific service and one particularly prefers that service to the Milwaukee service for the reasons which were fully explained.

In the Texas and Pacific case the only purpose of the Santa Fe trackage was to divert from the Texas and Pacific business which the Texas and Pacific had developed on its own rails. It was estimated that that divergence of direct traffic the Texas and Pacific was then handling was approximately half a million dollars. In our case we do not propose to serve plants that are now served by the Milwaukee.

In the Texas and Pacific case the territory sought to be served by the Santa Fe had never been ad-

jacent to its line. The area we propose to serve has always been tributary to our line since it was built in 1910. That was two years before the pioneer Milwaukee came into this territory. In the Texas and Pacific case the Court makes this comment:

“Where the proposed trackage extends into territory not theretofore served by the carrier, and particularly where it extends into territory already served by another carrier, its purpose and effect are, under the new policy of Congress, of national concern. [432]

“If the purpose and effect of the new trackage is to extend substantially the line of a carrier into new territory, the proposed trackage constitutes an extension of the railroad within the meaning of paragraph 18.”

In our case the track does not extend into new territory or territory already served by the appellant. Now, of course, any track, a spur track of any length in a sense is an extension into new territory. That is, it is a track where no track existed before. But certainly with the physical situation that exists here and the history of the Connell Northern, it is apparent that that line was built to serve this territory tributary and adjacent to it.

This area lying immediately east of Moses Lake and west of our station of Wheeler is on a plateau. It is some hundred and fifty feet above the area that comprises Moses Lake. It is on a plateau area. In order for the Milwaukee to get from its line it would have to build a line substantially as long as

we would build from our closest connection. This territory is certainly, this situation here is certainly no different than the situation that exists down at the sugar refinery (indicating map).

Now in our memorandum of authorities, your Honor, we have also referred to another case which the Milwaukee had, [433] Milwaukee vs. C. & E. Railroad Company, 198 Fed. 2nd at page 8. That appears on page 10 of our brief. In that case the Milwaukee sought to enjoin the C. & E. I. from building a line of track which extended across the Milwaukee. The purpose of the proposed track was to serve a power company. The company had invited the Milwaukee and two other railroads including the C. & E. I. to submit propositions for trackage. The C. & E. I. proposition was most satisfactory and it started to build the track. There as here the Milwaukee sought to enjoin them. The Circuit Court commenting upon the issues that were raised in the case, stated them as follows:

“Whether the industry to be reached was in territory adjacent to and tributary to plaintiff’s line of railroad, whether such territory could be more practically and economically afforded carrier service for the plaintiff, whether the plaintiff was ready, willing and able to furnish transportation service upon proper request therefore, and whether such track construction by defendant would entail the expenditures of large sums of money, and whether such construction would invade plaintiff’s territory and deprive it of revenues which would and could normally [434] accrue to plaintiff.”

Now, without attempting to go into the reading of the case further, there are several significant factors that I want to point out. In the first place, the proposed spur was three and fifteen-hundredths miles in length. The proposed spur of the C. & E. I. crossed the line of the Milwaukee to get to the gas plant. The Milwaukee estimated the cost of constructing the proposed trackage at \$500,000. The defendant's estimate was \$315,000.

Now in that decision the Court pointed out that the appellant relied heavily on the Texas and Pacific case and after discussing that case the Court—well, the Court discussed it in this way:

“The Santa Fe proposed to build new trackage for the purpose of reaching an industrial district which stretched two and one-half miles along the tracks of the Texas and Pacific. The proposed trackage was to extend generally into territory served by the Texas and Pacific and the effect of its construction would be to raid the established traffic of that railroad. In the case at bar the appellant, Milwaukee Railroad, does not furnish service to any industries south of its present right-of-way. As a matter of fact, the only [435] industry in that territory, Viking Coal Company, is served by the C. & E. I. Railroad, defendant-appellee, as we have explained. So far as this record shows, the proposed plant of Public Service Company and the Viking Mine are the only industries at present located in the area in question, and there are no communities located in said area.”

The Court then considered the several cases including the Texas and Pacific and also the case of Missouri, K. & T. R. Co. vs. Texas and N.O.R. Co. which I will refer to later, and concluded that under those authorities and the facts in that case the proposed track was a spur and that the plaintiff's petition for injunction was properly dismissed.

Now I mention that case for two reasons, the first, that the complaint in that case and the argument made there is substantially the argument that is made here. Reliance is placed upon the Texas and the Pacific case which has been referred to as the leading case since, as I pointed out, it was the first Supreme Court decision that construed the new provisions of the Act after their adoption in 1920, but said that that principle did not apply to an ordinary spur track, and that one was three and one-half miles in length, unless it went into new territory or unless it invaded territory already served by the complaining [436] carrier.

Now that has been the situation in all of the cases where the courts have held that there was an extension. Now returning to the allegations with respect to the proceedings before the I.C.C. in 1948 and the contentions made by counsel with respect to the similarity of that situation and what we have here; now in 1948 which was four years before irrigation water was to come into this territory, the Northern Pacific made application to get into Moses Lake. That was done at the request of shippers who wanted our service, at the request of the Chamber

of Commerce and civic interests, all of whom intervened in that proceeding.

They wanted another railroad to serve Moses Lake. We recognized in that situation that such an extension, that such trackage would constitute an extension of our line. The line was proposed and designed to reach into Moses Lake to tap territory and to serve industries that were already being served by the Milwaukee. Accordingly, we made an application to the Interstate Commerce Commission. We asked the Commission for authority, recognizing that we were then extending our line into territory already served by the Milwaukee.

Now the Commission denied our application because it found—and at that time in 1948, which was four years before the development, irrigation development was actually to get under way, that is by the actual supplying of water—was premature. The Commission, however, makes this comment [437] upon the showing made by the Milwaukee at that time that we were invading their territory:

“The mere fact that a carrier seeks to extend its service into an area that has been served exclusively by another carrier, by another, does not justify a denial of the application. Carriers have no legal right to exclusive occupancy of a territory and we have permitted the additional rail service wherever it has appeared that the interests of shippers required it.”

But then they went on to say that in this case they could not think that the time had arrived and the application was denied without prejudice to the

applicant to renew the same at some future date when it appears that the existing railroad facilities are inadequate to meet the convenience, public convenience and necessity. But in doing so the Commission pointed out certain things which it felt the Northern Pacific should do with respect to helping itself. I refer to sheet 8 of the Commission's decision where the Commission made this comment:

“Much stress is laid on the improvements that are expected after 1952 and the extent that Moses Lake will grow. If conditions become such that another railroad is necessary [438] no sound reason exists why application cannot be made at that time or without permission from us suitable facilities installed along the Connell Northern branch for shippers who wish to avail themselves of Northern Pacific service.”

And further at sheet 9 the Commission made this comment:

“There is the possibility, however, that the applicant might get a greater share of traffic from the area if it establishes shipping facilities along the Connell Northern branch supplemental to those of the Milwaukee at Moses Lake.”

Now in good faith following the Commission's decision in this case we have proceeded to do just that. We have endeavored to locate facilities at several points on our railroad. We have certain lands along our railroad which are included within the farm area development. We made an arrangement with the Bureau of Reclamation and apparently the Bureau recognized that there was a

necessity for industrial development in the area because they have permitted us by that arrangement to retain certain lands for that purpose. The only lands that we had in the plateau, the area which is adjacent and tributary to our line in the Wheeler area were the four sections, the four farm units in Section 13. We have proceeded to build [439] trackage to serve industries that desire to locate in that area. The track is not designed and is not intended to reach Moses Lake. There are no industries at the present time located in that area and it certainly is territory that is adjacent and tributary to the Connell Northern. It is much shorter than some of the lines that have been held to be spurs which the Courts have considered in some of the cases that we have cited, but the length of the spur or the track is not the significant thing. It is the character of the track and its purpose. It was not designed nor is it intended to use that line to go down over the hill into Moses Lake.

It is true that Section 13 adjoins Moses Lake and of course in an endeavor to sustain the allegations that have been made in the complaint with respect to the similarity of our 1948 application with what is here proposed, the Milwaukee has produced a flat map which showed simply that on the surface it appeared that what we were doing was going into virtually the same territory that we proposed in 1948.

Now it is true that one of them was in Section 14 and the other is Section 13, but when consideration is given and the true picture is shown as to what

the physical situation is, it is apparent immediately that here is in a sense a barrier of the type that removes Section 13 from the area we attempted to locate in in 1914 so far as trackage is [440] concerned, by a distance of from two to three miles or more. Now the Milwaukee did not attempt to show in its case in chief anything except the location on a flat map of those two sections. I do not know whether the Court was then familiar with the physical situation or not, but it is apparent that that map did not indicate the true situation. This contour map shows that the area from our line to the middle of Section 13 is virtually on a level plain. The pictures support that. When you get over to the middle point in Section 13 it drops off abruptly and the area of Moses Lake is some hundred and fifty feet below the area which we proposed to serve.

Now another essential under the Texas and Pacific case, if we do get into territory which might be served by both carriers, is that the complaining carrier can serve the territory and is ready, willing and able to serve it. No showing was made by the Milwaukee in its case in chief with respect to any attempt to serve Section 13. They simply contented themselves with showing that Section 13 cornered on the city of Moses Lake and that Section 13 as a whole was adjacent to Section 14 which, of course, is apparent on the map. It was not until after, by the picture, by the contour map which shows the elevation, which disclosed the true picture, did the Milwaukee make any suggestion that it was even

interested in serving Section 13. Then there was produced a map which, a projected location which indicated that [441] Mr. Crippen, the General Manager of the Milwaukee, had given some consideration to serving that area if shippers desired the service.

We had prepared maps and estimates to show the length of track on the most feasible route that would be required to reach into this territory and that trackage on the same grade that we proposed to get into Moses Lake in 1948 would be three and seven-tenths miles in length. Now in an attempt to show that there might be a shorter way, Mr. Crippen produced some estimates which I forget what he referred to, but they were simply exploratory I believe which purported to show how they could get into Section 13.

Now without taking the time to point out to the Court, I want to have the Court examine that exhibit that showed that for the reason that by Mr. Crippen's proposal he didn't get up on top of the hill at all. The track that he proposed which was a little over two miles in length on the two per cent grade was some more than a quarter of a mile short of the center line of Section 13. His line is still some fifty feet below the area which the Northern Pacific proposes to serve and upon which the industries are to be located. So that another necessary element which is essential in bringing this situation within the interpretation of the Texas and Pacific decision is lacking. First, that if this is common territory it can be readily served by the [442] Milwaukee.

Now in connection with those proposals by the Milwaukee, or if they had any intention to serve the area on any one of the three proposals which Mr. Derrig suggested were feasible, were possible, there would still be involved a cost to the Milwaukee without taking into consideration right-of-way acquisition, a sum approximately the amount that the Northern Pacific proposes to spend in connection with its spur. In fact, the physical construction costs, aside from the right-of-way in the one case on the one and one-tenth per cent grade and in the two per cent basis are more than the track construction costs in our proposal.

Our situation here we feel is controlled by another case which we have cited in our memorandum of authorities and that is Missouri K. & T. R. Co. vs. Texas and N.O.R. Co. which appears at page 7 in our memorandum of authorities and is reported in 172 Fed. (2d) 768. That involved a situation where there were two lines of railroad. There was a territory in between them much like there exists here. The M. K. & T.—

Mr. Krier: May I interrupt just a minute, please? Here is that map. That is this map of the Missouri K. & T. situation.

Mr. Eastman: In that case, if the Court please, the M. K. & T. sought to enjoin the Texas and N.O.R., which I shall refer to as the "Texas," from building tracks asserting that the track was an extension of the main line. The Texas [443] counter-claimed that certain tracks of the plaintiff, that the plaintiff was building, were extensions. So that we

had involved this territory which was between the two lines by the complaint and cross-complaint each containing, each contending that the tracks which were proposed were extensions and not spurs.

The Texas and N.O.R. built into Houston, Texas, and the M. K. & T. built its line in 1892 crossing the Texas line about five miles from the center of Houston, now within the city limits.

The M. K. & T. later built a track parallel to Texas with a highway between. The city of Houston then extended a street into the new territory which would develop as an industrial area. In order to reach it the Texas would have to cross the M. K. & T. parallel track. This new industrial area was still virgin prairie. The purpose of the Texas spur was to reach three or four industries which were about to be established which had sought service from the Texas.

The proposed trackage is about five thousand feet long and will cost thirty to forty thousand dollars. The aerial photographs show the land to be reached to be prairie land. Each wishes to share in the anticipated traffic. Each charges the other with trying to box it in. Neither the Commission nor any other public authority has sought to [444] interfere.

Now in that case the Court held that the Texas and Pacific vs. the Santa Fe was not applicable. They point out that in that case the Court, looking at the broad aims of Congress, held that the purpose and effect of the new trackage should be considered and although it was to serve industries

only and proposed to set up no new terminus for the railroad, yet it extended substantially the line of the carrier into new territory, the proposed trackage constitutes an extension of the railroad. The Court goes on to point out that in that case the new trackage was to go from a station on the main line of the Sante Fe for seven and one-half miles, besides spurs, sidings and other subsidiary tracks and was to cost \$510,000. It was to serve no industry on the way but to reach an industrial district extending two and one-half miles along the tracks of the Texas and Pacific to the vicinity of which no track of the Santa Fe had ever reached. The Court comments:

“The case here is radically different. We do not think this case is like that of the Texas and Pacific Ry. Co. vs. Gulf or involved an extension of the line of railroad of either contestant. The obtuse angle of prairie land was originally bounded as much by the main line of the one as by the other. Each had a right to build [445] spur tracks and industrial tracks from its main line into it. M. K. & T. built the first ones and its longer one strategically paralleled Texas and New Orleans. But neither that nor its other spurs pre-empted for the M.K.T. the hinterland, still undeveloped but in easy reach of both railroads. There is plenty of room and opportunity for both railroads to serve. There is no serious raiding of any established traffic. The proposed expenditures are not unusual or very significant for these strong and extensive railroads to make. We see no need to strain to hold these tracks which are in

form and in purpose and effect ordinary industrial tracks to be extensions of the lines of railroads of these two great carriers, which must be authorized by the Railroad Commission."

Now to my way of thinking if there ever was a "spotted cow" case that is it. Here we have a situation where this territory in here and down here, if the Court please (indicating on map), could possibly be reached by both [446] carriers. It lies in between our two branch lines. Industries are desirous of locating upon here (indicating map). They don't want to locate down on Moses Lake. Industries have been desirous of locating here between the two areas (indicating map). We built a spur into serve these industries. The Milwaukee built a spur up here to serve these (indicating map). Industries desire to locate here. We want to build a spur track over to serve them. If the Milwaukee sees fit and thinks it is feasible we are not contending that it doesn't have the same right, but that is the situation here.

The mere fact that the Milwaukee came into Moses Lake and that this proposal that we make here is adjacent as it appears on a flat map, does not indicate that it is an extension into Moses Lake. There is a barrier here. It is entirely different territory. But each on the assumption that there is a barrier, if the Milwaukee thinks it is feasible to get into that area we are not contending that it couldn't do it. We did not object when they built into the Scalley Sugar plant. We think that that is the situation.

Mr. Lutterman: I think that is a little outside of the record.

Mr. Eastman: Well, it is on that assumption that we are going to make an offer of proof in connection with that. We think, if your Honor please, that the plaintiff has wholly [447] failed to show that it is entitled to any injunctive relief, that the situation here is clearly an extension—clearly a spur track, no extension into new territory. There is no attempt to raid territory already served by the Milwaukee and the evidence shows that if we had intended to get into Moses Lake we would have done as we did in 1948, propose a spur from a different point and come down the hill into Moses Lake as we did in 1948.

I don't know whether we have any time left, your Honor.

The Court: Just about expired.

Mr. Eastman: What have we left?

The Court: If you have anything special you want to add go ahead and add it. I am fully cognizant of the importance of the case and I don't want to close you.

Mr. Krier: May the Court please, Mr. Eastman and I had an arrangement last night whereby—

The Court: If there is some phase of it you left that was to be covered, you better cover it.

Mr. Krier: He was to go ahead and cover it and if there was anything left he forgot, why I would.

The Court: Go ahead, go ahead, take some time.

Mr. Krier: I think Mr. Eastman has covered it, if your Honor please, and I think the only thing

that I would like to add to it—well, first, I have, I sent to Mr. Davis who [448] tried this Missouri Pacific case and asked him if he could furnish us with a map which he had and I forgot I had it, but the rest of them I tried to, in making up the brief, tried to from the facts in the case, make a little sketch because they are very difficult to read, at least I found it so and I couldn't from reading this case, the Missouri K. & T. determine the obtuse angle that the Court was talking about, so I asked Mr. Davis to send us this map which he did.

Now if the Court would like to look at it, it is only for illustrative purposes and it would be part of the brief, if your Honor is interested.

The Court: I have studied that case very carefully and I think I have it in mind. I don't know that it is necessary.

Mr. Krier: All right, all right. Otherwise I'd like to pay my respects to the witnesses in this case. I once in a while get into Court and sometimes I get very upset over the way the testimony comes in, but in this case I wish to say publicly and to your Honor that I think every witness on both sides testified in good faith and strictly open and above board.

The Court: It is a tribute to the railroad industry that it has people of this kind doing its business.

Mr. Krier: Well, I want to make our position clear to the Court in that respect, and if there are any facts that [449] we have left out I assure you that it is not intentional. We have tried to bring

everything we could for the Court's benefit. Thank you, your Honor.

The Court: I think it is not necessary for any reply, Mr. Lutterman.

I am sure you realize that I understand thoroughly the importance of this case, not merely to the litigants, but to the public generally and particularly as it bears on the development of a vast new empire that eventually will be one of the great agricultural areas of the world. I am very sensitive to that and on that account have given the case a preferential setting for trial, as you know, and have especially made an effort to hear it at the earliest possible time.

I very carefully examined the memoranda that have been submitted, each of the cases cited, the statutes, and I have very, very closely followed, as I am sure you have observed, the testimony as it went in, in addition to which, following the close of the testimony yesterday, I again reviewed all my notes and went over the exhibits.

Now with a case of this magnitude probably it would be better decided by a written decision. However, if that were to be done it would mean a delay of at least a month or six weeks before the case would be decided and I think that is undesirable from anyone's point of view. [450]

I feel that at the moment I am as well able to decide the case as ever I will be, if not better. A further consideration is that having purchased law books for a long time, I have tried to avoid the temptation of adding my bit to the weight of the

books on the shelves of the profession unless there be something in the nature of a point involved that really is of some significance for future cases. If it should appear that this case presents such a situation I will file a written decision later.

The law applicable to a controversy of this kind is so well settled by the authorities cited in these trial briefs that no extended discussion thereof is required. None of the cited cases is exactly apposite to the present case on its facts, but under the decision of the United State Supreme Court there is no real question as to the general principles applicable.

A detailed examination by me of each of the cited cases would not serve any useful purpose. Suffice it to say, that the decision I am about to make in my judgment is not out of harmony with any of the cases that have been brought to my attention. I think the case closest to the defendant's situation is this Missouri K. & T. R. case in 172 Fed. (2d), 768, but even it has very important factual features that distinguish it from the present case.

Under the Interstate Commerce Act, or the [451] Transportation Act—I haven't found out yet which one is the best term to use, apparently both are used—a railroad desiring to build new track constituting an extension of its line must have an I.C.C. Certificate of Public Convenience and Necessity authorizing the construction and the building of a proposed track without a certificate must be enjoined on an appropriate application therefor. The jurisdiction of the I.C.C., however, does not apply to the laying

of tracks which are merely for spur or industrial services.

It appears to be well settled that the Court must give a liberal or broad construction to the word "extension" and a limited or narrow construction to the words "spur" and "industrial" as applied in the Transportation Act to proposed tracks.

Under these statutes, I have no concern with and in fact have no right to consider, public convenience and necessity and any factors bearing on convenience or necessity of the public are irrelevant to the question that I have to decide in this case. I do not consider either the making of an application by the defendant for the 1948 proposed track nor the action of the Interstate Commerce Commission in denying that application as controlling in the present situation. However, I must say that I can see no substantial or material difference in the situation presented by the 1948 proposal and that presented by the present proposal. In my opinion the [452] two proposals in all material respects are identical.

Now, inasmuch as the Interstate Commerce Commission with exclusive jurisdiction to consider and determine public convenience and necessity, held that the 1948 proposed track was not authorized on that ground, there would be all the more reason for the Court not to permit any consideration of convenience or necessity or both to justify the building of the presently proposed track as a spur or industrial track.

The question for my determination is very narrow and limited. Basically it is as to whether or no the

track that the N.P. proposes to build is an extension into territory new to the N.P. and invading a field properly within or immediately adjacent to the area served by the Milwaukee. In dealing with similar controversies the courts have considered a variety of principal factors, not any one of which has been considered controlling in any given case.

Now among these various factors are the following:

Is the proposed track to improve rail facilities required by shippers who are already being served?

Second, is it to provide service to new shippers situated similarly to old ones and who are likewise entitled to service?

Third, is the track extending into the "virgin territory"? [453]

Four, is it to extend service to only a single industry?

Five, is the territory to be served within or adjacent to a general area or community already being adequately served by another carrier?

Six, is it feasible or practicable for the entire area to be served and occupied by the present carrier or the first carrier?

Another question, will the proposed track necessitate a substantial capital outlay?

Probably these are not all of the specific questions that have been posed in similar cases, but at least they are the principal ones and in framing them I have largely used the language of the courts themselves, as you may have observed.

A further matter discussed in the cases relates to

the presence or absence in connection with proposed new track, of stations, agents, line haul rates, billing by existing facilities, regular continuous movement of trains and other similar circumstances. The authorities indicate that the presence of these factors would be indicative of an extension, but the absence thereof does not necessarily establish the existence of a spur or industrial track.

Gentlemen, I am completely satisfied that if each of the questions that I have enumerated be answered in the [454] light of the evidence in the present case, and I have done exactly that in my own thinking about it, in every instance the answer will indicate that the proposed track here in question is an extension rather than a spur or industrial track. Except for the absence of a station, independent billing and similar circumstances, I do not find a single factor in the case supporting a finding that the proposed track is a spur irrespective of where the burden of proof lies in a case of this character, and no one has mentioned that, but I would assume it falls upon the plaintiff, the one seeking to prevent the construction.

I am satisfied that the evidence overwhelmingly establishes that, as a matter of fact, the proposed track is an extension and not a spur or industrial track. Accordingly, a certificate of the Interstate Commerce Commission certifying public convenience and necessity is required for the building of such a line and it being admitted that none has been issued, the defendant must be permanently en-

joined from building the track unless and until a certificate be issued.

That will be the judgment of the Court.

Now in order to facilitate conclusion of the case, I would like to suggest either that you repair to some place in Tacoma and prepare findings and conclusions and a decree in accordance with what I have stated, or that you do so on [455] your return to Seattle over the week end and be prepared to present it here for entry on Monday. Otherwise you will be long delayed in having the entry of the decree which I think is undesirable in this particular instance.

If you undertake to carry the matter further you should get on with it. If you do not, then the decree ought to be promptly entered. Now which do you prefer? I leave it entirely up to you. If you want to try and get the decree prepared here in Tacoma and return late in the afternoon I will be pleased to have you do so. On the other hand, I will be here Monday. We have a lot of matters on the calendar but certainly it wouldn't take very long to present the decree, and incidentally in that connection, I may say for your benefit in future cases as well as this one, that where an agreed order bearing the signature for approval of reputable counsel, among which those presently present are included in my book, such matters are signed and entered without the necessity of counsel making a trip from some distance just to place, just to come here and present an order. That is contrary to local rule number so and so, but that is Boldt's rule on such matters.

and if you think you can get together and present an agreed form of findings and so on, they may be mailed over. However, under the circumstances you had better be sure that it gets here or is presented to me Monday sometime.

Now with that you can decide for yourselves [456] what you wish to do.

Mr. Lutterman: Would you say ten o'clock Monday, if the Court please?

The Court: Any time Monday would be all right excepting about two o'clock. We have a very extended naturalization proceeding here from about one-thirty to three so any other hour.

Mr. Lutterman: In the morning session, then, ten to twelve.

The Court: Another thing, I will be here practically all day tomorrow hearing matters so if you want to get it here tomorrow and interrupt your golf you may do so, but that is——

Mr. Lutterman: I think——

The Court: Use your own convenience but convenience me to the extent of getting it to me by Monday.

We will now recess until one o'clock at which time the special convening of the Court for the acceptance of the portraits will be held. All present are cordially invited, as I have said before.

(Whereupon, at eleven-fifty o'clock, Court was recessed.) [457]

Certificate

I, Adele U. Douds, official reporter for the within-entitled court, hereby certify that the foregoing is a full and complete transcript of matters therein set forth.

/s/ ADELE U. DOUDS.

[Endorsed]: Filed May 26, 1954. [458]

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[Title of District Court and Cause.]

CERTIFICATE OF CLERK TO RECORD  
ON APPEAL

United States of America,  
Western District of Washington—ss.

I, Millard P. Thomas, Clerk of the above-entitled Court, do hereby certify that pursuant to the provisions of Rule 75(O) of the Federal Rules of Civil Procedure as amended, and Rule 10 as amended, of the United States Court of Appeals for the Ninth Circuit, I am transmitting herewith such of the original papers and pleadings and exhibits in the above-entitled cause as are designated by the written Stipulation of the parties hereto, and the said papers and pleadings and exhibits herewith transmitted constitute the Record on Appeal from that certain Judgment and Decree Granting Permanent Injunction of the above-entitled Court, filed and entered on March 1, 1954, to the United States

Court of Appeals for the Ninth Circuit, at San Francisco, California, and are identified as follows:

1. Complaint (filed Dec. 29, 1953).
2. Motion for Preliminary Injunction (filed Dec. 29, 1953).
3. Notice of Motion (filed Dec. 29, 1953).
4. Summons with Marshall's Return Thereon (filed Dec. 30, 1953).
5. Appearance of Defendant (filed Jan. 4, 1954).
6. Affidavit of J. T. Derrig (filed Jan. 4, 1954).
7. Affidavit of J. T. Moore (filed Jan. 4, 1954).
8. Order Granting Preliminary Injunction (filed and entered on Jan. 8, 1954, at 2:20 p.m.).
9. Security Bond for Preliminary Injunction (filed Jan. 8, 1954).
10. Copy of I.C.C. Report (See Pltf's. Exhibit No. 15) (filed 1/4/54).
11. Answer (filed Jan. 22, 1954).
12. Reply (filed Jan. 29, 1954).
13. Pretrial Discovery Depositions of Derrig and Moore (filed Feb. 23, 1954).
14. Plaintiff's Trial Brief (filed Feb. 23, 1954).
15. Memorandum of Authorities of Defendant (filed Feb. 23, 1954).
16. Praecipe for Subpoenas (filed Feb. 23, 1954).
17. Findings of Fact and Conclusions of Law (filed and entered March 1, 1954).
18. Judgment and Decree Granting Permanent Injunction (filed and entered March 1, 1954).
19. Plaintiff's Memorandum of Costs and Disbursements (filed March 6, 1954).

20. Notice, Defendant, of Appeal (filed March 29, 1954).

21. Bond on Appeal (filed March 29, 1954).

22. Decision (filed April 20, 1954).

23. Stipulation as to Record on Appeal (filed April 22, 1954).

24. Motion for Order to Include Exhibits in Record on Appeal (filed April 26, 1954).

25. Order to Transmit Original Exhibits (filed April 26, 1954).

26. Motion for Order to Extend Time (filed April 30, 1954).

27. Order Extending Time to File Appeal Record (filed April 30, 1954).

28. Reporter's Transcript of Proceedings (in 4 volumes) (filed May 26, 1954).

I further certify that as part of the Record on Appeal I am transmitting under separate cover the following original exhibits admitted in evidence in the trial of the above-entitled cause, to wit:

Plaintiff's Exhibits Nos. 1 to 15, inclusive;

Defendant's Exhibits Nos. A-1 to A-27, inclusive.

I further certify that the following is a true and correct statement of all expenses, costs, fees and charges incurred in my office on behalf of the parties hereto for the preparation of the Record on Appeal in this cause, to wit: Notice of Appeal (Defendant), \$5.00, and that the fee of \$5.00 has been paid to the Clerk.

In Witness Whereof I have hereunto set my hand

and affixed the official seal of the said District Court at Tacoma, Washington, this 29th day of May, 1954.

[Seal]

MILLARD P. THOMAS,  
Clerk;

By /s/ E. E. REDMAYNE,  
Deputy.

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[Endorsed]: No. 14373. United States Court of Appeals for the Ninth Circuit. Northern Pacific Railway Company, a Corporation, Appellant, vs. Chicago, Milwaukee, St. Paul and Pacific Railroad Company, a Corporation, Appellee. Transcript of Record. Appeal from the United States District Court for the Western District of Washington, Southern Division.

Filed June 1, 1954.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

In the United States Court of Appeals  
for the Ninth Circuit

No. 14373

NORTHERN PACIFIC RAILWAY COMPANY,  
a Wisconsin Corporation,

Appellant,

vs.

CHICAGO, MILWAUKEE, ST. PAUL AND  
PACIFIC RAILROAD COMPANY, a Wis-  
consin Corporation,

Appellee.

### STATEMENT OF POINTS

Comes now the appellant and submits the following points upon which it will rely:

1. The proposed track to be constructed by the appellant westerly from its Connell Northern Branch to Section 13, Township 19 North, Range 28 East W.M., Grant County, Washington, is a spur or industrial track within the meaning of Title 49, Section 1(22), U.S.C.A.

2. The land sought to be reached by the said proposed track is tributary to the appellant's Connell Northern Branch line of railroad and the territory served thereby, and that said land sought to be reached is not now served by any other railroad.

3. That, although it may be possible for the appellee railroad to construct a track to serve the land

sought to be served by the appellant, it is more feasible and practicable to serve said land by track connection with the appellant's railroad.

4. That the construction of the proposed track would not involve a substantial sum of money and would not deprive the appellee of substantial revenue.

5. That the application of the appellant filed on or about May 24, 1948, with the Interstate Commerce Commission was for an extension of its line of railroad into the city of Moses Lake, State of Washington. That the construction of the proposed track as described in Point No. 1 is not in the same territory or substantially the same.

Respectfully submitted,

/s/ DEAN H. EASTMAN,

/s/ ROSCOE KRIER,

Attorneys for Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed June 11, 1954.

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[Title of District Court and Cause.]

STIPULATION DESIGNATING RECORD  
TO BE PRINTED

It Is Hereby Stipulated by and between the parties hereto, by and through their respective attorneys of record, that the following portions of the record on appeal may be printed:

1. Complaint (filed Dec. 29, 1953).
11. Answer (filed Jan. 22, 1954).
12. Reply (filed Jan. 29, 1954).
17. Findings of Fact and Conclusions of Law (filed and entered March 1, 1954).
18. Judgment and Decree Granting Permanent Injunction (filed and entered March 1, 1954).
19. Plaintiff's Memorandum of Costs and Disbursements (filed March 6, 1954).
20. Notice, Defendant, of Appeal (filed March 29, 1954).
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25. Order to Transmit Original Exhibits (filed April 26, 1954).
26. Motion for Order to Extend Time (filed April 30, 1954).
27. Order Extending time to File Appeal Record (filed Apr. 30, 1954).
28. Reporter's Transcript of Proceedings (in 7 volumes) (filed May 26, 1954).

It Is Further Stipulated that those exhibits which can't be readily reproduced, such as maps and photographs, may with the consent of the court be considered in original form. It is suggested to the court and stipulated between the parties that those exhibits which cannot be readily reproduced are:

## Plaintiff's Exhibits:

No. 1—Map, N.P. proposed line.

No. 2—Drawg. N.P. proposed track, Exhibit in ICC Finance Docket No. 16119.

No. 4—Map.

No. 10—Aerial photograph Moses Lake.

No. 11—Railroad map.

No. 12—Map proposed trackage in Sec. 13.

No. 13—Map proposed track into Sec. 13 from Milwaukee tracks.

No. 14—Map track layout.

## Defendant's Exhibits:

A-1—Topographical map.

A-2—Topographical map.

A-3—Topographical map, combination of Exhibits A-1 and A-2.

A-4—Profile map of section lines to Moses Lake.

A-5—Map of A-1 and A-2.

A-6—Photograph.

A-7—Photograph.

A-8—Photograph.

A-9—Photograph.

A-10—Photograph.

A-11—Photograph.

A-12—Photograph.

A-13—Photograph.

A-14—Photograph.

A-15—Photograph.

A-16—Photograph.

A-17—Photograph.

A-18—Photograph.

A-19—Photograph.

A-20—Photograph.

A-21—Photograph.

A-22—Track profile spur to Sec. 13.

A-24—Extension Milwaukee track into 13.

A-25—2% Grade line from Milwaukee's track at Moses Lake to Sec. 13.

A-26—Map, U & I Sugar spur.

It Is Suggested to the Court and Stipulated between the parties that those exhibits which may be printed are:

Plaintiff's Exhibits:

No. 3—Estimated cost, N.P. proposed track.

No. 5—Statement carload shipments, '38 to '47.

No. 6—Statement carload shipments, '48 to '53.

No. 7—Statement carload shipments, '38 to '47.

No. 8—Statement carload shipments, '48 to '53.

No. 9—Freight revenues.

No. 15—Finance Docket No. 16119.

Defendant's Exhibits:

A-23—Est. cost construction spur, Sec. 13.

A-27—Carloads per year to Sec. 13 & estimated revenue.

Dated this 10th day of June, 1954.

/s/ DEAN H. EASTMAN,

/s/ ROSCOE KRIER,

Attorneys for Appellant.

/s/ B. E. LUTTERMAN,

Attorney for Appellee.

[Endorsed]: Filed June 11, 1954.

[The text on this page is extremely faint and illegible. It appears to be a list or a series of entries, possibly containing names and dates, but the specific details cannot be discerned.]